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TUITION TAX CREDIT—1983

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BEFORE THE

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UNITED STATES SENATE

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FIRST SESSION

ON

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CONTENTS

ADMINISTRATION WITNESSES

Page

Hon. John E. Chapoton, Assistant Secretary for Tax Policy, Department of the Treasury 61
Hon. Terrel H. Bell, Secretary of Education 75
Hon. William Bradford Reynolds, Assistant Attorney General, Department of Justice 114

PUBLIC WITNESSES

Accelerated Christian Education, Inc., Edgar D. Whitcomb 137
American Federation of Teachers, AFL-CIO, Greg Humphrey 407
American Jewish Congress, Nathan Dershowitz 212
Baptist Joint Committee on Public Affairs, James M. Dunn 204
Casserly, Michael, legislative and research associate, the Council of Great City Schools 458
Citizens for Educational Freedom, Sister Renee Oliver 325
Council for American Private Education, Mrs. Wallie Simpson 134
Council of Great City Schools, Michael Casserly 456
Dershowitz, Nathan, American Jewish Congress, New York, N.Y 212
Dingman, Richard B., legislative director, the Moral Majority 174
Dunn, James M., executive director, Baptist Joint Committee on Public Affairs 196
Freitag, Bernie, vice president, National Education Association 432
Gallagher, Rev. Thomas, U.S. Catholic Conference 276
Humphrey, Greg, for the American Federation of Teachers, AFL-CIO 407
Kansas National Education Association, Nancy Lindberg 128
Lehrfeld, William J., the Catholic Daughters of America, the Knights of Columbus, the Daughters of Isabella, the National Council of Catholic Women, the National Catholic Education Association and Citizens for Educational Freedom 280
  Internal Revenue Code provisions respecting tax benefits to both private and public schools, submitted by William J. Lehrfeld at the request of Senator Durenberger 281
Lindberg, Nancy, president, Kansas National Education Association 128
Lubinsky, Rabbi Menachem, Agudath Israel of America 316
Metroconomy, Inc., Dr. Thomas Vitullo-Martin 153
Moral Majority, Richard B. Dingman 174
NAACP, Althea T. L. Simmons, director, Washington Bureau 187
National Education Association, Bernie Freitag 435
Oliver, Sister Renee, associate director, Citizens for Educational Freedom 322
Simmons, Althea T. L., director, Washington Bureau, NAACP 189
Simpson, Mrs. Wallie, on behalf of the Council for American Private Education 134
U.S. Catholic Conference, Rev. Thomas Gallagher 278
Vitullo-Martin, Dr. Thomas, director of research, Metroconomy, Inc., New York, N.Y 151
Whitcomb, Edgar D., on behalf of Accelerated Christian Education, Inc., Lewisville, Tex 137

ADDITIONAL INFORMATION

Committee press release 1

Page

Prepared statements of:

- Senator John H. Chafee, Rhode Island 1
- Senator Bob Dole, Kansas 2
- Letter from Congressional Research Service 4
- Senator Dave Durenberger, Minnesota 6
- Senator Daniel Patrick Moynihan, New York 8
- Senator David Boren, Oklahoma 10
- Senator Charles Grassley, Iowa 13
- Senator David Pryor, Arkansas 13

Description of S. 528 15
Text of bill S. 528 27
Prepared statement of Hon. John E. Chapoton 64
Letter from President Reagan to Senator Dole 77
Prepared statement of Secretary Bell 80
Interim report, Governor's Legislative Committee for Nonpublic Schools 102
Answers to questions by Senator Chafee 120
Letter and prepared statement, Senator Ernest Hollings, South Carolina 124
Resolution from the Southern Baptist Convention 128

Prepared statements of:

- Nancy Lindberg, president, Kansas-National Education Association 133
- Mrs. Wallie Simpson, LES International Community School (founder/director), New York, N.Y 136
- Edgar D. Whitcomb, Accelerated Christian Education 138
- Dr. Thomas Vitullo-Martin, director of research, Metroconomy, Inc 153
- Richard B. Dingman, legislative director, Moral Majority, Inc 175
- Althea T. L Simmons, director, Washington Bureau, NAACP 189
- Dr. James Dunn for Americans United for Separation of Church and State 199
  - Article, New York Law Journal 217
  - Article, the School Voucher Plan: The Case For and Against 268
- Leo Pfeffer on his own behalf and on behalf of American Jewish Congress and National Coalition for Public Education and Religious Liberty and New York Committee for Public Education and Religious Liberty 250
- Joseph B. Robison on behalf of American Jewish Congress 264

NAACP 61st Annual Convention resolution, June 29–July 3, 1970 276
NAACP 62nd Annual Convention resolution, June 4–July 9, 1971 276
Prepared statement of: Rev. Thomas G. Gallagher, secretary of education on behalf of the U.S. Catholic Conference 276

Prepared statements of:

- Committee for Private Education, William J. Lehrfeld, tax counsel 294
- Leonard Fine, representing the Louisiana Catholic Conference 308

Written testimony of:

- Mrs. Mary Ann Babendrier 310
- Mrs. Helen W. Brice 311
- Frances Bell 312
- Mrs. Lydia Jones 313
- Mrs. Carmen Madden 314
- Richard Sylvester 315

Prepared statements of:

- Rabbi Menachem Lubinsky, director, government and public affairs, Agudath Israel of America 318
- Sister Renee Oliver, Citizens for Educational Freedom 325
- Kirby J. Ducote, exectutive director, Louisiana Federation, Citizens for Educational Freedom 340

William J. Lehrfeld's response to a question by Senator Durenberger concerning tuition vouchers 294
The Constitutionality of Federal Tuition Tax Credits, William J. Lehrfeld 347
Testimony submitted by Harold Isenberg, of the Federation of the Catholic Teachers 386

Statement of:

- Albert Shanker, president, American Federation of Teachers, AFL–CIO 410
- Dorothy Shields, director, Department of Education, AFL–CIO 414
- AFL–CIO Executive Council on Education 422

Prepared statements of:

- Bernie Freitag, vice president, National Education Association 432
- Michael D. Casserly, Council of the Great City Schools 456

COMMUNICATIONS

Page

Statement of:

- Senator D'Amato, New York ... 462
- Representative Lawrence Coughlin, Pennsylvania ... 463
- American Federation of State, County and Municipal Employees, AFL-CIO ... 465
- American Association of Community and Junior Colleges; American Association of State Colleges and Universities; National Association of State Universities and Land-Grant Colleges ... 469
- Association for Public Justice, James W. Skillen ... 473
- Council for American Private Education, Michael T. Ruiter, Ph. D ... 481
- Leonard DeFiore, Ed. D ... 487
- William E. Laird, Florida State University ... 501
- Letter to Senator Dole from League of Women Voters of the United States ... 506
- National Association of Elementary School Principals ... 508
- National Association of Evangelicals, Forest D. Montgomery, counsel ... 511
- The National Coalition for Public Education ... 513
- The National Congress of Parents and Teachers ... 530
- Mary M. Patnaude for New Jersey Right to Educational Choice Committee ... 536
- New York State School Boards Association, Stanley L. Raub ... 542
- The Unitarian Universalist Association of Churches of North America; the America Humanist Association; the Council for Democratic and Secular Humanism; the Voice of Reason ... 545

TUITION TAX CREDITS

THURSDAY, APRIL 28, 1983

U.S. SENATE,
SENATE COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m. in room SD-215, Dirksen Senate Office Building, the Honorable Robert J. Dole (chairman) presiding.

Present: Senators Dole, Packwood, Chafee, Durenberger, Grassley, Long, Moynihan, Boren, and Pryor.

[The press release announcing the hearing, and the prepared statements of Senators Dole, Chafee, Durenberger, Moynihan, and Pryor follow:]

[Press release No. 83-126, Apr. 12, 1983]

FINANCE COMMITTEE SETS HEARING ON TUITION TAX CREDIT BILL

Senator Bob Dole (R., Kans.), Chairman of the Senate Committee on Finance, announced today that the Committee will hold a hearing on Thursday, April 28, 1983, on S. 528, the Administration's tuition tax credit bill introduced by Senator Dole for himself, and Senators Packwood, Moynihan, Roth, and D'Amato.

The hearing will begin at 10:00 a.m. on April 28, 1983 in Room SD-215 (formerly Room 2221) of the Dirksen Senate Office Building.

PREPARED STATEMENT OF SENATOR JOHN H. CHAFEE

Mr. Chairman, I am pleased to have the opportunity to join with you this morning in exploring the arguments both for and against the administration's tuition tax credit proposal.

I have given this proposal very careful consideration each time it has been set forth, and though I respect the bill's proponents, I remain strongly opposed for several reasons.

The first reason should be clear to each member of the Finance Committee, which has been struggling with methods to contain the $200 billion (baseline) deficit currently facing our nation—the highest in history. In the face of such a sea of red ink, it is to me unconscionable that we should be considering this new tax expenditure program, the cost projections for which are at best highly questionable.

However, tuition tax credits would be wrong even if the budget were in surplus. In the last few years, the Congress has had to make some extremely difficult reductions in spending for a host of valuable social programs in the name of budget control. Some of these cuts have been at the expense of valuable education programs. Further reductions were proposed by the Administration this year, including a 15-percent reduction in elementary and secondary education programs, 10 percent in child nutrition, 8 percent in higher education, and 40 percent in vocational education. Those of us in Congress who are concerned about the quality of our educational system will work diligently to ensure that these severe cuts do not take place. However, given the nation's budget constraints, we will be fortunate to be able to maintain these programs at the current level of funding. I am frankly astonished that the Administration should propose a program whose price tag is at least $1.5 billion over the next 3 years, when so many worthy education programs are being squeezed.

Furthermore, tuition tax credits would be wrong even if we do preserve current levels of education funding. I fear that tuition tax credits could still profoundly undermine our nation's public school system. There is no question that our public schools face an enormous challenge. They are charged with educating all of our young people—not just the most talented. Tuition tax credits would provide an incentive for more parents to send their children to private schools, thus "skimming" many of the most highly motivated students away from the public schools. These highly motivated students help provide balance to our public school system and help bolster public satisfaction and support for the system.

Parents certainly have a right to choose to send their children to private schools, but this is indeed a personal decision and not one we should subsidize with revenues from the taxpayers.

I am deeply troubled about what this could mean for education in America, and I look forward to examining the issue at today's hearing.

Thank you.

STATEMENT OF SENATOR BOB DOLE ON CRS REPORT

In preparation for today's Finance Committee hearing on tuition tax credits for private elementary and secondary schools, I asked the Congressional Research Service to prepare a revenue estimate of the amount of Federal tax expenditures subsidizing public school districts. The CRS estimate, which I am releasing today, indicates that $13.7 billion in tax subsidies will be provided to public school districts in fiscal year 1983, largely through tax deductions permitted for State and local taxes, and through the nontaxability of interest on certain State and local bonds.

The Administration's tuition tax credit bill is estimated by the staff of the Joint Committee on Taxation to cost less than $800 million when fully phased in.

STATEMENT OF SENATOR BOB DOLE

INTRODUCTION

"Our Nation is at risk. Our once unchallenged preeminence in commerce, industry, science and technological innovation is being overtaken by competitors throughout the world."

These are not my words, but excerpts from "A Nation at Risk", a report of the National Commission on Excellence in Education that was released on April 26th at the White House. The National Commission report is sobering reading. The Commission found that the average achievement of high school students on most standardized tests in now lower than it was 26 years ago when Sputnik was launched. In addition, the Commission found that over half the population of gifted students failed to match their tested ability with comparable achievement in the schools.

The report notes that these deficiencies come at a time when the demand for highly skilled workers in new fields is accelerating rapidly. But the concern of the Commission went well beyond matters such as industry and commerce. To quote from the report again,

"Our concern . . . also includes the intellectual, moral and spiritual strength of our people, which knits together the very fabric of our society. A high level of shared education is essential to a free democratic society and to the fostering of common culture, especially in a country that prides itself on pluralism and industrial freedom."

It is fitting that this report was released on the eve of the Finance Committee's hearings on the Administration's proposal to allow a limited tax credit for elementary and secondary private school tuition. I was pleased to introduce the Administration's tax credit bill, in the Senate, for myself and on behalf of Senators Packwood, Moynihan, Roth and D'Amato.

TUITION TAX CREDITS ARE CONTROVERSIAL

Tuition tax credit legislation has always been controversial. Both proponents, and opponents of tuition tax credit legislation have strongly-felt views, on all of the critical issues this proposed legislation raises.

Tuition tax credits are championed, and challenged, on education policy grounds. They are championed, and challenged, in terms of their relationship to the First and Fourteenth Amendments to the Constitution. They are championed, and challenged, in terms of their impact on tax policy. And they are championed, and challenged, in terms of their overall budgetary impact.

SENATOR DOLE'S SUPPORT FOR TAX CREDITS

One thing is certain: As the old adage goes, "If you think education is expensive, try ignorance." Or, as the National Commission put it, "Excellence costs . . . but in the long run mediocrity costs far more."

At today's hearing the Finance Committee will be hearing testimony from distinguished witnesses representing a broad range of views on the educational, budgetary, constitutional, and tax policy issues raised by the Administration's tuition tax credit propoal. In addition, many groups and individuals who requested to testify, but who were unable to be scheduled in the limited time available, will be submitting testimony and comments for the hearing record. All comments submitted to the Committee, orally and in writing, will be given careful consideration. Indeed, because of the length of today's witness list, I would like to ask the witnesses who are presenting oral testimony to please try to limit their testimony to a short statement of the most salient points they wish to make. Because the Finance Committee held hearings on a similar Administration bill last July, it would be most helpful if the witnesses could limit their oral testimony, as far as is possible, to comments and views which were not presented to the Committee last July, or to specific comments on provisions in the Administration's current proposal that were not contained in last year's bill.

Personally, I have been a long time supporter of providing Federal income tax relief for lower and middle income families who carry the additional burden of supporting the public schools while sending their children to private schools. Because of this double burden, an alternative to public education is simply not available to lower income families today and is not available to middle income families without substantial sacrifice. The economic burden of inflation and recession in recent years has made matters worse. Yet alternatives to public education contribute to the pluralism that help make our society strong. Alternatives to public education can also help stimulate improvements in our public schools through the competition those alternatives present. A strong system of private schools available to all income classes should contribute to a better education for all of our children. Moreover, an educated skilled populace is an essential ingredient in maintaining this Nation's technological industrial prominence.

NO CREDITS FOR DISCRIMINATORY SCHOOLS

Although I support tuition tax credits in principle, I would not support any bill without adequte safeguards ensuring that tax credits would be allowed for payments to private schools with racially discriminatory policies or practices. Last year the Finance Committee carefully reviewed the anti-discrimination provisions of the administration's tuition tax credit bill. Extensive discussions were held with administration officials and experts and interested laymen in the fields of education, civil rights, and law. The final product of the Finance Committee's deliberations was a set of anti-discrimination rules that, I believe, are very strong. The President's bill is substantially the same as the bill reported last September by the Finance Committee with some minor modifications and technical corrections. Because the provisions of the Administration's bill dealing with racial discrimination are the product of last year's careful review of the discrimination issue by the Finance Committee, I believe that the enactment of the Administration's bill will not in any way frustrate our fundamental national policy against racial discrimination in education. I am not an expert on this topic, however, and welcome the comments of civil rights experts and interested laymen on the specific provisions of this bill.

BUDGETARY CONSIDERATIONS

The Administration's bill also contains several modifications to last year's bill that were adopted by the Finance Committee and that substantially reduce the cost of tuition tax credits. By reducing the amount of allowable credits, delaying the bill's effective date, and lowering the phase-out and ineligibility criteria, the administration's revised bill eliminates all revenue losses in fiscal year 1983, and reduces the total revenue loss over the 3-year period ending in fiscal year 1985 by over $400 million. When the bill is fully effective in fiscal year 1986, it will cost less than $800 million each year. Of course, these costs are not insignificant. But in light of the long term economic benefits to be obtained from encouraging investment in human capital and promoting greater diversity and competition in education, these costs are a sound and prudent investment in our Nation's future.

REFUNDABILITY

Many supporters of tuition tax credits feel that private school tuition assistance should be available to individuals with no tax liability, on the same basis as higher income individuals with tax liability. They feel, accordingly, that any tuition tax credit legislation should include provisions making the tax credits refundable, in order that the benefits provided by the bill be available to lower income individuals. Last year, the Members of the Finance Committee expressed their strong support for the concept of a refundable tuition tax credit. I expect that the issue of refundability will be considered again this year when the Finance Committee reviews this proposed legislation.

I look forward to hearing the testimony of our distinguished witnesses today, and also to reading the more extensive comments they and others will be submitting for the record.

Congressional Research Service,
The Library of Congress,
Washington, D.C., April 27, 1983.

To: Senate Finance Committee, Attention: Harry Graham.
From: Nonna Noto, Specialist in Public Finance, Economics Division.
Subject: Estimate of Federal Tax Expenditure Subsidy to School Districts.

In the Government estimates of tax expenditures made by the Treasury Department and the Joint Committee on Taxation, there is no explicit category for aid to school districts, or even of aid to State and local governments in general. Consequently, in order to address your question about the amount of the Federal tax expenditure subsidy to primary and secondary education, we needed to generate an estimate by assigning to school districts a portion of four categories of tax expenditures associated with aid to State and local government in general. The results are summarized in the accompanying table.

For reasons explained in greater detail below, CRS estimates that school districts benefit from 58 percent of the subsidy associated with the deductibility of property taxes on owner-occupied homes; 29 percent of the subsidy associated with the deductibility of all other nonbusiness State and local taxes (primarily income, general sales, and personal property taxes); 35 percent of the subsidy associated with the exclusion of interest paid on State and local general obligation bonds; and none of the subsidy associated with the exclusion of interest paid on revenue bonds sponsored by State and local governments. These are the percentage figures shown in column 1 of the table.

Column 2 of the table presents the revenue loss estimates for these four categories of tax expenditure made by the Treasury Department and reported in Special Analysis G of the fiscal year 1984 Federal budget, published in February 1983. The estimated dollar amount of benefit associated with school districts (as opposed to other State and local functions) presented in column 3 is calculated by multiplying the percentage allocation for school districts (in column 1) times the total dollar estimate for the tax expenditure item (in column 2).

The resulting dollar amount of subsidy attributable to school districts in column 3 can then be compared with the total for all State and local government activities in column 2. The subtotal considers only the tax expenditure estimates for property taxes, other State-local nonbusiness taxes, and exclusion of interest on State-local general obligation bonds. It indicates that for fiscal year 1983, of the total of $36,825 million in tax expenditures going to State-local taxpayers (individuals only) and general obligation bondholders (both individuals and businesses), approximately $13,700 million, or 37 percent, is attributable to school districts.

The total considers tax expenditures associated with the exclusion of interest on State and local revenue bonds as a form of aid to State and local governments, rather than as aid to private-purpose activities sponsored by State and local governments. Because no revenue bonds are associated with primary and secondary education, the dollar estimate of tax expenditures for school districts remains at $13,700. But because the basis of comparison for total State-local subsidy grows to $42,600 million, the percentage attributable to school districts drops to 32 percent.

ESTIMATING THE FEDERAL TAX EXPENDITURE SUBSIDY TO SCHOOL DISTRICTS

Tax expenditure category	Estimated percent going to school districts	Projected revenue loss from tax expenditure item, fiscal year 1983 in (dollars in millions)	Estimated tax expenditure subsidy to school districts, fiscal year 1983 (1) × (2) (dollars in millions)
	(1)	(2)	(3)
Deductibility of State and local taxes:[1]			
Property taxes on owner-occupied homes	58	$8,765	$5,083
Other nonbusiness taxes (primarily income, sales, and personal property)	29	20,060	5,817
Exclusion of interest on State and local debt:[2] General obligation bonds	35	8,000	2,800
Subtotal	37	36,825	13,700
Revenue bonds [3]	0	5,775	0
Total	32	42,600	13,700

[1] Derives from individual income tax only. Because State and local taxes are considered a normal business expense, their deduction is not treated as a tax expenditure item for corporation income tax purposes, or for sole proprietorship or partnership income tax purposes.

[2] The tax-expenditure figures for the exclusion of interest on State and local bonds include estimates under both the corporation and individual income tax.

[3] The revenue bond category includes the following classifications detailed in the tax-expenditure budget: industrial development, pollution control, owner-occupied housing, rental housing, student loan, hospital, mass transit, and energy production facilities.

Source: Tax expenditure revenue loss estimates in column 2 from U.S. Office of Management and Budget, Special Analyses, Budget of the United States Government, Fiscal Year 1984 (Washington, D.C.: U.S. Government Printing Office, 1983), table G-2, p. G-31 and G-32. CRS estimated the percentage of each category going to school districts by the methods explained in the text.

It should be emphasized that the total revenue loss estimates for tax expenditures are rough aggregate figures for the Nation as a whole. These estimates are particularly rough for the exclusion of interest on State and local bonds, since there are inadequate records of the total amount of bonds outstanding (especially for revenue bonds) and there is no IRS record of who holds these bonds and consequently no way to determine the actual marginal tax rate applicable for tax expenditure estimates. In addition, because of differences among States and localities in the proportion of their own revenue sources that are deductible for Federal income tax purposes, there may be corresponding differences in the percentage of benefits associated with State-local tax deductions that are directly attributable to school districts as compared with other State and local functions.

METHODS FOR ESTIMATING THE PERCENTAGE OF TAX EXPENDITURES ATTRIBUTABLE TO SCHOOL DISTRICTS

The percentage estimates for the deductibility of State and local taxes were based on data obtained from the U.S. Bureau of the Census, Governmental Finances in 1979-80, Series GF80, No. 5, U.S. Government Printing Office, Washington, D.C., 1981. The estimates for the exclusion of interest on State and local general obligation debt were based on data obtained from the 1977 Census of Governments.

Property taxes. It was assumed that all property taxes were paid to local as opposed to State governments, that property taxes were the sole local own-source revenues available to support school districts, and that these local property taxes must be allocated between school district and other local government functions. Total local spending on education ($104.8 billion, including interest payments, debt retirement, and pension contributions, in addition to direct expenditure on education) minus State ($52.7 billion) and Federal ($1.7 billion) aid to local school districts was considered local own-saved spending on education ($50.4 billion). This was compared with local own-source tax revenues ($86.4 billion) to produce the percentage of 58 applied to property taxes for school districts. (Own-source tax revenues include taxes paid by businesses as well as individuals as households.)

Other nonbusiness State and local taxes.—The category of other nonbusiness State and local taxes includes primarily income, general sales, and personal property taxes. To facilitate this calculation, it is assumed that all of these taxes are paid to State as opposed to local governments. (We know that in practice some local governments levy these taxes, although the resulting revenues may be designated for municipal and not school district purposes.) It is further assumed that all own-source State aid to local school districts is paid from these tax revenue sources.

State aid to local school districts ($52.7 billion) minus Federal Aid to States for education purposes ($12.8 billion) yields an estimate of State own-source aid to school districts ($39.9 billion). This is compared to total State own-source tax revenues ($137 billion) to yield the percentage of 29 applied to "other nonbusiness State and local taxes" for school districts.

General obligation debt.—Total school district debt outstanding ($35.1 billion) was compared to local full faith and credit debt outstanding ($94.8 billion) (this corresponds to general obligation as compared with revenue bonds). The resulting figure of 37 percent, based on 1977 data, was rounded down to 35 percent as the figure to apply to general obligation interest for school districts.

Revenue bonds.—The one category of revenue bonds that can be considered educational aid is student loan bonds. But because this is for college education and out side the scope of aid to primary and secondary education being considered here, it is excluded from the calculation. Consequently, it is assumed that none of the tax-expenditure benefits from revenue bonds are associated directly with school districts. Because the tax-favored treatment of revenue bonds can be considered as aid to private-purpose activities rather than State and local governments, it can or cannot be considered as part of the total subsidy to State and local governments. In the table, the subtotal excludes consideration of revenue bonds and the total includes it.

STATEMENT OF SENATOR DAVE DURENBERGER

I am pleased to have the opportunity to support S. 528 and the concept of tuition tax credits. I commend the chairman for bringing this bill before the committee.

I represent the State of Minnesota which has a long tradition of excellence and innovation in education, a tradition I am proud to share. We understand that dollars invested in education today return many times their value in benefits to society. Education is the key to America's future, the thread that binds the fabric of our society.

Recent reports have made us painfully aware that the thread has begun to unravel and we have found our educational system threatened. Forces from within our society and from without have challenged America's claim to the finest learning traditions in the world. No longer can we boast that we produce the best teachers, scientists, and mathmeticians. Tomorrow our place in the international economic community may be imperiled because we lack the linguistic abilities to compete. Many youngsters have been faced with inadequate curricula and our school systems have been threatened with economic and demographic crises.

How, during these troubled economic times, can we begin to reweave the fabric of education in the United States? This task, while not an easy one, challenges us to be creative, to look to the future, and to respect the integrity and commitment of the vast majority of Americans to our youth.

I want to commend Senators Packwood and Moynihan for their continuing commitment to improving America's educational system. I also applaud President Reagan for making the quality of elementary and secondary education and the issue of tuition tax credits a priority in his administration. Although I am supporting the administration's bill, I support tuition tax credits for reasons which differ from those espoused by the President. I do not view tuition tax credits as simply a mechanism to assist private and parochial school students and their parents. I support tuition tax credits because I believe they are the most efficient and effective national means to improve the educational opportunities of all children by fostering choice and competition in our elementary and secondary educational system.

I believe if Americans were given greater opportunities for educational selection, they would become more involved in the educational process and would make responsible decisions. Tuition tax credits are an effective mechanism to strengthen educational delivery systems—both governmental and non-governmental—by extending the concept of consumer choice.

Consumer choice has proven in other important public services to ensure diversification and innovation by those who are professionally trained to deliver services. Choice works in both the private and public sectors as competition for consumer support develops creative and improved services. Teaching continues to be the strongest professional resource in our educational system. Tuition tax credits, and other innovative concepts, could provide teachers with an incentive to develop nontraditional approaches to service delivery, along with a clear benchmark by which they can judge the success or failure of those efforts.

Tuition tax credits are not a trade-off between public and private education. Effective consumer choice can only exist in an environment where both systems are strong. Consumers must have access to alternatives, not only between government and non-government systems, but more importantly, among differing systems within each sector. Tuition tax credits are not an excuse to weaken traditional governmental support for the "public school" system. On the contrary, a commitment to consumer choice means a recommitment to the principles underlying that support.

But if tax credit legislation is to accomplish these goals, it cannot be restricted to families with children enrolled in non-governmental organizations. The program must be structured as governmental tax policy aid to all children—not just those who patronize a certain class of institution.

As part of national education incentives, I will therefore offer an amendment to extend the tax credit to families with children in public schools who are paying tuition. In 1978-79, the State of Minnesota received over $2 million in tuition payments from parents with children in the public school system. And with local and State governments under considerable financial strain, the use of tuition to ensure adequate funding for government-financed schools is likely to continue.

The Minnesota experience has proven that a tax credit or deduction for both public and private school tuition is necessary not only for the success of the program, but is a constitutional necessity.

In order to withstand constitutional challenges predicated upon the Establishment Clause of the Constitution, legislation must satisfy three criteria. First, the legislation must have a secular purpose—in this case, the benefit and improve our educational system. Second, there cannot be excessive governmental entanglement—the present tax proposal should not require excessive government involvement.

Finally, legislation will be analyzed to determine its primary effect. In order to ascertain the primary effect of government action, the courts have looked at the breadth of the class of individuals benefited. S. 528, as currently written, will benefit only families with children in private and parochial schools—thus, subjecting the legislation to serious constitutional objections.

If this proposal were expanded to include public school tuition, the class of students, potentially, would be greatly expanded beyond those attending sectarian institutions. Minnesota, whose educational tax deduction law is currently being considered by the United States Supreme Court, in *Mueller* v. *Allen,* 514 F. Supp. 998 (D. Minn. 1981), has emphasized the constitutional significance of including both public and private school expenses in that law.

"The deduction is allowable to all taxpayers who have dependents in elementary and secondary schools, public or nonpublic, religiously affiliated or not. Of particular importance constitutionally are the benefits available to public school parents." (Brief of Respondents.)

Although it is true that there are currently a limited number of public school parents who would benefit from tuition tax credits, such a provision would ultimately result in increased use of tuition by public schools. In time, public school parents would become the primary beneficiaries of this law.

The Constitution, through the Fifth and Fourteenth Amendments, guarantees the right to equal protection of the law. If individuals in the same class receive different treatment under the law there must be a rational basis for such discrimination. Presently, certain parents with children in public schools are paying tuition for attendance (i.e., parents whose children attend schools outside their home district boundaries).

S. 528 allows tuition tax credits only for those children in parochial and private schools—not those attending public schools. As a result, the legislation is also subject to constitutional objection on Equal Protection grounds. I fail to see any rational distinction between parents who are paying tuition and property taxes and sending their children to public schools and parents who pay tuition and property taxes and send their children to private or parochial schools.

The choice must rest with family and it is my intention to continue to work to see this legislation extend, ultimately, to public and private school tuition, fees, books and transportation.

Similarly, I do not believe this legislation should be limited to elementary and secondary education. If we are truly going to expand consumer choice in education, this proposal should be extended to post-secondary education as well. While we have made progress in expanding consumer choice in higher education, through loan and grant programs, these are not the most efficient means of doing so.

Our national grant and loan programs, because of their administrative costs, reduce the actual amount received by the consumer and are therefore a less efficient use of federal revenue. It is my hope that we apply tuition tax credits to higher education as a more efficient supplement to loan/grant programs and I will continue to work towards that goal.

It is essential that we insure that tuition tax credits cannot be used as a mechanism to foster discriminatory educational institutions. The Federal Government certainly cannot restrict the right of private or religious institutions to espouse whatever doctrines they choose, but a tax advantage is a privilege, not a right. It is fully proper for government to condition access to that privilege on compliance with primary national policy, namely the policy of nondiscrimination.

I sincerely hope that the proposed tuition tax credit legislation is an introduction to further dialogue—a starting point from which we can explore the many opportunities for American education and a chance to provide consumers with choices in education.

The 1980s are, and will continue to be, challenging for America. Our educational system must be at the forefront as we move from an industrial-based economy to a service-oriented one. We cannot shrink in fear from that challenge, but instead must meet it head on.

As indicated by the conclusions of the Minneapolis/St. Paul Citizen's League Study of Education, creativity is the key to the future.

"We need a climate which encourages, defends, and rewards innovative results. We need flexibility to contract with other providers for certain services, to match teachers to the instructional path. There is enormous unused creative potential among today's teachers and frustration which can be converted to renewed commitment if we had the courage to remove the barriers, many of which are firmly fixed in existing policies and procedures, now discouraging more individual responsibility for improving performance."

Expansion of choice, through programs such as tuition tax credits, will ultimately return preeminence to education to the American public.

STATEMENT BY SENATOR DANIEL PATRICK MOYNIHAN

Mr. Chairman, the tuition tax credit legislation that we are holding hearings on today is a matter of justice for the 5 million students currently enrolled in the Nation's elementary and secondary nonpublic schools.

I have been a strong proponent of tuition tax credit legislation, having introduced such measures in the 95th, 96th, and 97th Congresses. The first bill I introduced (with Senator Packwood) upon coming to the Senate proposed the creation of a tuition tax credit plan not unlike the measure the Finance Committee recommended to the full Senate for enactment last year. In 1978, Senator Packwood and I chaired 3 full days of hearings on an elementary, secondary, and postsecondary tuition tax credit measure we had introduced. Tuition tax credit legislation passed the House of Representatives that year and our proposal nearly passed the Senate as well. Senator Packwood and I reintroduced our bill in the 96th Congress but no action was taken on it during that session.

This has not been a business for the short winded. In 1961, I wrote an article for the Reporter, entitled "How Catholics Feel About Federal School Aid." In it, I addressed the upcoming debate over the question of whether Federal aid ought to be provided to education. I emphasized that if such aid were to be forthcoming, the question of providing such aid to the Catholic schools (at the time they enrolled over 85 percent of the students attending nonpublic schools at the elementary and secondary levels) would need to be resolved if Federal aid to education was to become a reality. As it happened, I was to become further involved with this matter while a member of the administration of President Kennedy. President Kennedy had proposed, in 1961, the creation of a $2.3 billion program of grants to States for classroom construction and for increasing teacher's salaries. The President's advisers, however, opposed making such aid available to church related schools. Having failed to include provisions for the participation of the church-related schools, the churches opposed the measure and this led in part to it not being approved by Congress. Similar efforts the following 2 years were unsuccessful as well. In 1964, after extensive negotiations, in which I was the mediating party, the issue of Federal aid to education including church-relating schools was resolved as between the Johnson administration and the advocates of aid to all schools. It fell to me that summer to draft the Democratic Party platform embodying that agreement. It read:

"New methods of financial aid must be explored, including the channeling of federally collected revenues to all levels of education, and to the extent permitted by the Constitution, to all schools."

President Johnson signed the Elementary and Secondary Education Act of 1965 on April 11 of that year. Included among its many provisions was a promise that nonpublic schools would receive their fair share of Federal assistance provided to education. Title I of that act provides:

"That to the extent consistent with the number of educationally deprived children in the school district of the local education agency who are enrolled in private elementary and secondary schools, such agency has made provisions for including special educational services and arrangements (such as dual enrollment educational radio and television, and mobile educational services and equipment) in which such children can participate."

In the main this was intended to mean that Title I services would be provided to needy school children, regardless of where they attended school. Instructional equipment and other aid authorized by the act was to be treated in a similar fashion. But the promise of 1965 has not been kept. In the 17 years since Congress passed and President Johnson signed that landmark measure into law, participation by the nonpublic sector has never equaled the commitment made. Successive Congresses and administrations have been either unable or willing to take whatever steps are needed to see that nonpublic schools receive their fair share. Given this history of failed promises, and given what I view as the desirability of encouraging the diversity and pluralism which the nonpublic sector brings to education in this Nation, I believe it entirely appropriate for Congress to enact a system of tuition tax credits designed to assist those parents who choose to send their children to nongovernment schools.

Such assistance has been promised repeatedly in recent years by both the Democratic and Republican Parties and their Presidential candidates.

When President Reagan sent his proposal for tuition tax credits in 1982 to the Congress I commended him for being the first American President to propose such legislation. This was indeed a momentous occasion. While other candidates had pledged to do so, President Reagan was the only one in a position to carry out his campaign promise. Thus, on July 16, with only a few months remaining in the 97th Congress (and with little assurance that a consensus could be reached) the Finance Committee began hearings on S. 2673, the administration's tuition tax credit plan, introduced by my colleague, Senator Dole, the distinguished chairman of the committee.

Let me emphasize the two major concerns I have had with the tuition tax credit legislation that has come before this committee previously. First, no student attending a school that practices illegal discrimination would benefit from the availability of tuition tax credits. This bill, like the bill that came out of the Finance Committee last year, directs the Attorney General upon a finding of good cause to seek declaratory judgments against schools which discriminate. Such an action could be brought in response to a complaint of discrimination filed by individuals or upon evidence presented showing that a school was following a racially discriminatory policy. If the Attorney General brought such an action and prevailed, the parents of any student attending the school would be ineligible for tuition tax credits. In addition, the tuition tax credit program would not go into effect until it is firmly established that section 501(c)(3) of the Internal Revenue Code requires a school to maintain a racially nondiscriminatory policy. This issue shall be decided by either the Supreme Court in connection with cases currently before it or, failing that, action by Congress.

Second, I continue to maintain that tuition tax credits must be refundable so as to benefit low-income families who choose to send their children to nonpublic schools. Members of the committee agreed with me last year when we considered the President's bill, and our intent at the time was to offer a committee amendment on the floor of the Senate. I hope the same shall be done this year, as the bill before us now contains no refundability provisions.

Tuition tax credits have been claimed by some to be of aid almost exclusively to white families. This is not so. Catholic schools, which make up the largest portion to nonpublic schools in the nation, have shown an increase in minority enrollment over the last 12 years. In the 1970–71 school year, Blacks made up 4.8 percent of the total elementary and secondary enrollment in Catholic schools in the country. In 1982–83, the enrollment of Blacks grew to 8.8 percent of the total student population. The percentage of Hispanics also increased from 5.0 percent to 9.1 percent over the same period. Minority enrollment in Catholic schools has gone from slightly over 10 percent to more than 20 percent in the past 12 years.

Assistance to education, including aid to the nonpublic sector, is a well established idea. It has been endorsed repeatedly by many both in and outside of Government. Still, as I have remarked at the hearings Senator Packwood and I have held on this subject over the past six and a half years, many remain of the view that providing any assistance to nonpublic schools is a concept somehow foreign to the American experience. I believe that our hearings have had substantial educational value in this regard. They have, in my view, dispelled the myth that State aid to private schools is somehow a new concept or that the Founding Fathers believed that the first amendment barred any assistance to church-related schools. There is a history here and if our hearings have accomplished anything they have served to establish the important historical and contemporary role that non-public schools have played in our society.

The legislation we are holding hearings on today is intended to insure that students in nonpublic schools receive a fair share of assistance from the Federal Government. The public schools do and must come first; the vast bulk of current Federal education expenditures goes to the public schools and their students. This is as it should be. But that does not mean we should forget the nonpublic schools and their students. Rather, we would strive to confer justice on nonpublic education, to treat private school students the same as public school students, and finally to fulfill the promise we made in 1964. I continue to regard tuition tax credits as a reasonable and desirable means of achieving these objectives, and urge my colleagues to give our proposal the consideration it merits.

STATEMENT BY U.S. SENATOR DAVID BOREN

I think it is very unfortunate the Administration has again decided to pursue its tuition tax credit proposal. Frankly, I had hoped that with the demise of this legislation in the 97th Congress we had seen the last of it

At the outset, I want to make it clear I am opposed to tuition tax credits primarily because of the negative effects I believe they would have on our public education system. No one believes any more strongly than I do that parents should have the right to send their children to a private school if they so choose. It is one thing to have that right, however, but quite another to expect the federal government to encourage and support it through the tax system. I, for one, do not believe the federal government has that obligation to provide direct financial assistance for private education.

I want to focus my comments today on the impact I believe this proposal would have on the public schools. It is both ironic and regrettable that, at a time when we should be searching for ways to re-vitalize and upgrade the nation's public education system, we are holding these hearings on a proposal which, in my opinion, will only undermine the system.

The just-released report of the National Commission on Excellence in Education has called attention to the major challenges we face in educating the next generation of America's leaders. As we all know, the task of achieving excellence in education is certainly not an easy one. Nothing short of a determined national effort will succeed in keeping our educational system in step with the rapid changes taking place in the world.

Public education has been a powerful force in our national development. America's pre-eminence in world affairs has been achieved largely because of the nation's investment in public education. We have invested not only our financial resources, but our national will in support of free public education for all our citizens.

Now, at a time when America's pre-eminence and leadership is being challenged, we must rediscover the central importance of the nation's public school system and the role it plays in producing our scientists, mathematicians, skilled workers and engineers, to name just a few.

Perhaps more importantly, however, I believe establishment of a tuition tax system for private schools will lead to an erosion of something which has made our American democracy unique. I am speaking here of the role public education has played in bridging gaps and promoting understanding in our society, in creating a sense of community which comes from a shared, common experience in a classroom by children of different economic, racial and cultural backgrounds.

In some countries it is the privileged few, the wealthy, or those who enjoy majority status, who are permitted an education. In this nation, however, we have committed ourselves to the ideal that all citizens, regardless of race, religion, or financial means, are entitled to a free public education and one which is just as good as could be purchased by the wealthiest individual. Reducing funding for public education will clearly not help us reach that ideal.

Many of our greatest leaders, both in the private and public sectors, have come from the humblest of origins. For most of these individuals, the public schools have provided the means whereby they were able to develop their minds and reach their full potentials.

How tragic it will be if we ever lose sight of the fact that public education has contributed so much to our democracy. Out of the shared, common experiences of the public schools has emerged our national identity. I firmly believe we should be acting to reaffirm the importance of public education to our national life by rejecting proposals such as tuition tax credits, for they can only serve to weaken our commitment to the public schools.

Oklahoma City, Oklahoma

Data on this sheet reflect the impact of the Administration's budget cuts and tuition tax credit legislation on the pattern of per pupil spending in public and private schools. The expenditures are those from Department of Education and tuition tax credit sources. Assumptions for analyses are based on Department of Education figures and data obtained directely from local school officials in this city.

	1980-1981	1981-1982	1982-1983	1983-1984	1984-1985
PUBLIC SCHOOLS					
Direct Federal ED Expenditures	$6,300,000	$6,800,000	$6,400,000	$5,440,000	$5,168,000.
Enrollment	39,581	39,616	41,514	41,514	41,514
Federal Per Pupil Expenditure	$159.17	$171.65	$154.16	$131.04	$124.49
PRIVATE SCHOOLS					
Direct Federal ED Expenditures	Title I only $70,000	$70,000	$70,000	$60,000	$50,000
Federal Tax Expenditures (Tuition tax credits)	-----	-----	$523,676	$1,344,126	$2,124,859
Enrollment	7,355	7,355	7,355	7,355	7,355
Federal Per Pupil Expenditure	$9.52	$9.52	$80.72	$190.90	$295.70

Source: Council of the Great City Schools and the American Association of School Administrators. For further information call (703) 528-0700.

Statement of Senator Charles Grassley

Mr. Chairman, the bill before us today, S. 528, would establish a nonrefundable tax credit for 50 percent of tuition paid during a taxable year to elementary and secondary schools with non-discriminatory policies.

The measure before us provides a maximum tuition tax credit to a taxpayer on behalf of each dependent in the following amounts: $100 paid in 1983; $200 paid in 1984; and $300 paid in 1985 and subsequent years. The maximum credit would be reduced by a specified percentage for taxpayers earning over $40,000 annually. The credit would phase out entirely when the taxpayers earn $60,000 per year. The bill also prohibits parents from claiming the credit if their children are enrolled in a school with a racially discriminatory policy. Senators Packwood, Moynihan and Bradley studied this language at length last year and agreed upon the language in this measure as the most effective way to prevent federal furtherance of racially discriminatory policies of educational institutions.

Despite the considerable controversy that surrounds the concept of tuition tax credits, I believe that this committee should lower the income cap limit. To accomplish this goal, I introduced a bill this week which competely phases out the credit at $50,000 rather than $60,000, yet retains the exact language of this bill in every other respect. When this bill is marked up, I intend to offer a similar amendment.

This legislation should prove to be constitutionally acceptable, educationally beneficial and helpful in giving parents a broad range of choices for their children. Historically, our nation has supported the right of parents to be personally involved in the education of their children. Indeed, until the late 19th century, schools were not primarily state-supported, state-founded or state-initiated. A pluralistic society such as ours should highly value the encouragement of increased educational choices, not narrow options. We should be stimulating innovation and flexibility, not monolithic institutions. We should be spurring genuine competition in the marketplace of ideas, not limiting the intellectual outlets of our youth.

Economically, tuition tax credits should benefit lower and middle income parents. A majority of parents with children in private elementary and secondary schools have incomes of $25,000 or less. These parents are strapped by inflation, taxation and the recession we are emerging from this spring. Without tuition tax credits, the exercise of educational choice is a financial hardship except for the well-to-do. Tax credits, unlike deductions, give an income-constant benefit, which means lower income taxpayers will proportionately benefit more than upper income individuals.

Parents of private school children support the public education system through state and local taxes. This credit is designed to provide them some very modest relief for the cost of supporting a dual education system. In the case of religious schools, it enables them to exercise the constitutional rights guaranteed under the Free Exercise clause.

Assuming that there must be stringent controls to disallow tuition credits to racially discriminatory schools, I believe the tuition tax credit would encourage pluralism, not stifle it. The comments of the witnesses on this year's legislation will be important to all of us in trying to perfect and advance this measure.

Statement of Senator David Pryor

Mr. Chairman, I look forward to this hearing today on S. 528, the Educational Opportunity and Equity Act of 1983. I know that you and three other of my colleagues on this committee, Senators Packwood, Roth and Moynihan, are actively supporting this measure.

Mr. Chairman, I have strong reservations about the whole concept of tuition tax credits. I realize that this subject is not a new one. The summary of this area by the staff of the Joint Committee shows the amount of activity just in the last few years, and this committee even reported out a bill in the 97th Congress on this subject. However, many questions need to be answered.

For instance, I am concerned about the effect of this proposal on public education which is already under severe pressures. Additionally, I have concerns about constitutional problems with this proposal.

I also am bothered by the revenue loss from this measure. From my calculations, the estimated revenue loss by the Joint Committee on Taxation is $245 million in FY 1984; $526 million in FY 1985; and roughly $3 billion over a five-year period. I simply don't think we can enact this bill at a time when the budget deficits are continuing to mount. Two days ago we learned that the deficit for the first six months of this fiscal year was $129.2 billion. The deficit for the entire last fiscal year (Fiscal

Year 1982) was a record $110.6 billion. Therefore, we've already set a new record—but we did it in just six months time and the picture doesn't get any better.

Mr. Chairman, this is an extremely complicated area, and one which deserves detailed consideration. I look forward to hearing the testimony of the witnesses today and I appreciate your holding this hearing on this very important subject.

DESCRIPTION OF S. 528

(THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983)

RELATING TO

TAX CREDIT FOR TUITION EXPENSES

INTRODUCTION

The Senate Committee on Finance has scheduled a public hearing on S. 528, the Educational Opportunity and Equity Act of 1983 (introduced by Senators Dole, Packwood, Moynihan, Roth, and D'Amato), relating to tax credits for private elementary and secondary education expenses.

This pamphlet, prepared in connection with the hearing, has four parts. The first part is a summary of present law and the bill. Part two describes present law. Part three discusses prior Congressional action relating to tuition tax benefits. Part four provides a detailed description of the provisions of S. 528, including effective date and estimated revenue effect.

I. SUMMARY

Present law provides no tax credit or deduction for personal educational expenses. However, in certain cases, taxpayers are entitled to a personal exemption for a dependent, which they could not claim otherwise, because the dependent is a student. Moreover, individuals generally may exclude from gross income amounts received as scholarships and fellowships, or amounts received under qualified educational assistance programs. Finally, certain types of "job-related" education expenses may be deducted.

The bill would provide a nonrefundable credit for 50 percent of tuition expenses paid to private elementary and secondary schools for certain qualified dependents of the taxpayer. The maximum credit per dependent would be $100 in 1983, $200 in 1984, and $300 in 1985 and subsequent years. The maximum credit amount would be phased down for taxpayers with adjusted gross incomes of greater than $40,000 and no credit would be allowed for taxpayers with adjusted gross incomes of $60,000 or more.

For tuition expenses to be creditable, a school could not follow a racially discriminatory policy. An eligible school (*i.e.*, a school that is exempt from taxation under Code sec. 501(a) as an organization described in Code sec. 501(c)(3)) would be required to include a statement of its nondiscriminatory policy in any published by-laws, admissions materials, and advertising, and to file annually with the Treasury Department a statement that it has not followed a racially discriminatory policy. Generally, a copy of this statement also would have to be furnished to each individual who pays tuition to the school and be attached to any return on which credits are claimed. In addition, the bill would disallow credits for payments to any school found to be following a racially discriminatory policy in an action brought by the Attorney General under the bill's declaratory judgment provisions.

The bill generally would apply to tuition paid or incurred after July 31, 1983, for taxable years beginning after December 31, 1982; however, no credits would be allowed until either a final decision by the Supreme Court of the United States or an Act of Congress prohibits the granting of a tax exemption under section 501(a) of the Internal Revenue Code by reason of section 501(c)(3) to private educational institutions that maintain a racially discriminatory policy or practice as to students. Credits would be effective on a prospective basis after such final decision or Act of Congress.

II. PRESENT LAW

Tax Benefits for Educational Expenses

Special rule for claiming dependency exemption for a child who is a student

In certain cases, taxpayers are entitled to a personal exemption for a dependent, which they otherwise could not claim, because the dependent is a student. Generally, a taxpayer may claim a $1,000 personal exemption for each dependent who has less than $1,000 gross income for a taxable year. However, the gross income limitation does not apply if the dependent is the taxpayer's child and is under the age of 19 or is a student (Code sec. 151).

Income tax exclusion for scholarships and fellowships

Individuals generally may exclude from income amounts received as scholarships and fellowships (Code sec. 117). The exclusion also covers incidental amounts received to cover expenses for travel, research, clerical help, and equipment when they are expended for these purposes. The exclusion for scholarships and fellowship grants is restricted to educational grants by relatively disinterested grantors who do not require any significant consideration (e.g., promises of future services) from the recipient, except in the case of certain Federal grants. Similarly, where an educational institution allows delayed payment of tuition, the Internal Revenue Service regards tuition postponement to be a loan and, therefore, not includible as income to the student (Rev. Rul. 72-2, 1972-1 C.B. 19).

Deduction for "job-related" educational expenses

Education expenses which qualify as trade or business expenses under Code section 162 may be deducted. Expenditures made by an individual for his own education generally are deductible if they are for education which (1) maintains or improves skills required by the individual's employment or other trade or business or (2) meets the express requirements of the individual's employer or the requirements of applicable law or regulations imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation (Treas. Reg. sec. 1.162-5(a)). These types of education commonly are called "job-related" education.

Income tax exclusion for amounts received under educational assistance programs

For taxable years beginning after December 31, 1978, and before December 31, 1983, amounts paid by an employer for an employee's educational expenses may be excluded from the employee's income if paid pursuant to a qualified educational assistance program (Code sec. 127). A qualified educational assistance program must be a separate written plan of an employer for the exclusive benefit of employees. The plan also must meet requirements with respect to nondiscrimination in contributions or benefits and in eligibility for enrollment, but it need not be funded or approved in advance by the Internal Revenue Service. For a program to qualify, the employees must be given adequate notification and must not be able to choose taxable benefits in lieu of the educational assistance.

Benefits which may be provided under the program include tuition, fees, and similar payments, books, supplies, and equipment. Covered studies need not be restricted to courses which are job-related or part of a degree program.[1] However, an employee claiming an exclusion under this section may not claim any other deduction or credit (e.g., a Code sec. 162 deduction for job-related education) with respect to any excludible benefits.

Other tax provisions of benefit to education

Some provisions that benefit education, in general, and sometimes students, in particular, include the exclusion from income of gifts (Code sec. 102), which may comprise a large portion of a student's educational expenses and the charitable contribution deduction (Code sec. 170), which allows a deduction for charitable contributions (not tuition payments) to educational institutions. Other provisions, such as the exclusion of interest on State and municipal bonds (Code sec. 103) and the deduction for State and local taxes (Code sec. 164) indirectly assist publicly-supported educational institutions by easing the financial burden of State and local governments.

Effect of Racial Discrimination on Tax-Exempt Status of Private Schools

The Internal Revenue Service issued a revenue ruling and a revenue procedure,[2] in 1971 and 1972, respectively, which state that private schools with racially discriminatory policies as to students will not be recognized as organizations exempt from Federal income tax. These documents also set forth guidelines for determining whether certain private schools have adequately publicized their racially nondiscriminatory policies so as to enable them to qualify for tax-exempt status.

In 1975, the IRS published Revenue Procedure 75-50, 1975-2 C.B. 587, which sets forth guidelines and recordkeeping requirements for determining whether private schools have racially nondiscriminatory policies. This revenue procedure superseded Rev. Proc. 72-54, supra.

In general, the 1975 guidelines provide that to obtain recognition of tax-exempt status under section 501(c)(3):

> (1) A school must include a statement in its charter, by-laws, or other governing instrument, or in a resolution of its govern-

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[1] Generally, however, no exclusion is permitted for educational assistance furnished for courses involving sports, games, or hobbies.

[2] Rev. Rul. 71-447, 1971-2 C.B. 230 and Rev. Proc. 72-54, 1972-2 C.B. 834. These documents were issued in response to *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C.) aff'd per curiam sub nom. *Coit* v. *Green*, 404 U.S. 997 (1971), which held that racially discriminatory private schools are not entitled to the Federal tax exemptions provided for educational organizations and that gifts to such schools are not deductible as charitable contributions by the donors.

ing body, that it has a racially nondiscriminatory policy as to students and, therefore, does not discriminate against applicants;

(2) the school must include a statement of its racially nondiscriminatory policy as to students in all its brochures and catalogues dealing with student admissions, programs, and scholarships;

(3) the school must make its racially nondiscriminatory policy known to all segments of the general community served by the school;

(4) the school must be able to show that all of its programs and facilities are operated in a racially nondiscriminatory manner; and

(5) as a general rule, all scholarships or other comparable benefits procurable for use at the school must be offered on a racially nondiscriminatory basis. Their availability on this basis must be made known throughout the general community being served by the school and should be referred to in the publicity necessary to satisfy the third requirement in order for that school to be considered racially nondiscriminatory as to students.

This revenue procedure also requires that an individual authorized to act officially on behalf of a school which claims to be racially nondiscriminatory as to students must certify annually, under penalties of perjury, that to the best of his knowledge and belief the school has satisfied the requirements listed in the procedure.

The 1975 revenue procedure further provides that the existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students, while, conversely, the absence of racial discrimination in employment of faculty and administrative staff is indicative of a racially nondiscriminatory policy as to students. Failure to comply with the guidelines set forth in Revenue Procedure 75-50 ordinarily results in the proposed revocation of the tax-exempt status of a school.

Through provisions enacted as part of annual appropriations legislation, the Congress has, at various times in the past, forbidden the Internal Revenue Service from developing or carrying out any rulings, procedures, or other positions concerning tax exemption for racially discriminatory private schools beyond those that were in effect prior to August 22, 1978.[3]

The issue of whether schools with racially discriminatory policies may qualify for tax-exempt status currently is pending before the U.S. Supreme Court in the cases of *Goldsboro Christian Schools, Inc.* v. *United States* (No. 81-1) and *Bob Jones University* v. *United States* (No. 81-3).

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[3] This prohibition originally was enacted in response to the fact that on August 21, 1978, the Internal Revenue Service proposed publication of a revenue procedure intended to revise administrative guidelines for determining whether a private school operates in a racially discriminatory manner. As a result of the reopening of litigation in *Green* v. *Connally*, supra, and *Wright* v. *Miller*, 480 F. Supp. 790 (D.D.C. 1979), rev'd sub nom. *Wright* v. *Regan*, 656 F. 2d 820 (D.C. Cir. 1981), the IRS had concluded that its prior revenue procedures had not been effective in identifying schools that were racially discriminatory even though they had professed an open enrollment policy and had complied with the requirements of Revenue Procedure 75-50.

III. PRIOR CONGRESSIONAL ACTION

In the 1950's, tax deductions from adjusted gross income for some portion of college expenses and an additional personal exemption for each student were the most common legislative proposals for tax relief for educational expenses. In the 1960's, tax credit proposals became popular. From 1967 to 1977, six education tax credit proposals passed the Senate, but none was ever approved by the House of Representatives. As noted below, different tuition tax credit proposals passed both the House and Senate in 1978.

1977 Legislation

The Social Security Financing Amendments of 1977, as passed by the Senate, contained an amendment, known as the "Roth amendment," to provide a tax credit for certain educational expenses. This amendment was deleted from the bill by the conferees.

The 1977 amendment would have allowed a tax credit for educational expenses paid by an individual for himself, his spouse, or his dependents. The credit would have covered 100 percent of the eligible educational expenses at institutions of higher education (but not graduate schools) or postsecondary vocational schools, up to a maximum of $250 for any one individual. This credit would have been refundable only for the first year that it was effective.

1978 Legislation

In February 1978, the Senate Finance Committee reported a House-passed tariff bill with an amendment providing a refundable credit for tuition and fees paid for undergraduate college and postsecondary vocational school expenses after August 1, 1978, and for elementary and secondary school expenses after August 1, 1980. On August 1, 1981, this credit would have been extended to the educational expenses of graduate students and part-time students. The credit would have been for an amount equal to 50 percent of tuition and fees, with a maximum credit of $250 per-student per-year as of August 1, 1978, increasing to a maximum of $500 per student on August 1, 1980. This bill was never considered on the Senate floor.

The House Ways and Means Committee, in April, 1978, reported a bill (the "Tuition Tax Credit Act of 1978") that would have provided a nonrefundable credit equal to 25 percent of the tuition paid by the taxpayer to one or more eligible educational institutions for himself, his spouse, or any of his dependents.[1]

This credit would have been available only for tuition paid to undergraduate institutions of higher education and postsecondary vocational schools. The maximum credit would have been $100 for 1978, $150 for 1979, and $250 for 1980.

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[1] H.R. Rep. No. 95-1056, 95th Cong., 2d Sess. (1978).

The House amended this bill to provide a credit, with the same limits applicable to tuition paid to undergraduate institutions, for graduate postsecondary expenses. In addition, the bill was amended to provide a credit for expenses paid to elementary and secondary schools. The maximum credit for elementary and secondary school expenses would have been $50 for 1978, $100 for 1979, and $100 for 1980.

The Senate Finance Committee, in August 1978, reported the House-passed bill with amendments (the "Tuition Tax Relief Act of 1978").[2] This bill would have provided a nonrefundable credit for an amount equal to 50 percent of the educational expenses paid by the taxpayer during the taxable year. Beginning August 1, 1978, the maximum credit for undergraduate college or postsecondary vocational school expenses would have been $250. This amount would have increased to $500 on October 1, 1980. In addition, the credit would have been expanded to cover students in private elementary and secondary schools (including vocational secondary schools) and half-time undergraduate students, as of October 1, 1981. The maximum credit for elementary and secondary school expenses would have been $250. The Senate amended this bill by deleting coverage for elementary and secondary school expenses and by providing that no credit would be allowed after December 31, 1983.

On October 3, 1978, the Conference Committee reported a bill that would have provided a credit equal to 35 percent of tuition paid to institutions of higher education and postsecondary vocational schools.[3] The maximum credit allowed under this proposal would have been $100 for 1978, $150 for 1979, $250 for 1980, and $250 for 1981. The House rejected this proposal, and the Conference Committee submitted a second report that, in addition to a credit for higher education expenses, would have allowed a credit for secondary education expenses (a maximum credit of $50 in 1978, $100 in 1979, $100 in 1980, and $100 in 1981).[4] This proposal was rejected by the Senate.

96th Congress

Although there were several bills providing for tuition tax credits introduced in the 96th Congress, no legislative action was taken on them.

97th Congress

In the 97th Congress, the Senate Committee on Finance reported a bill similar to S. 528 (see, S. Rep. No. 97-576, 97th Cong., 2d. Sess. (1982)). That bill (H.R. 1635) differed from S. 528 in that it would have provided no credit for tuition paid to a school having an admissions policy that discriminated against handicapped children, or attendance at which did not satisfy State compulsory attendance laws. In addition, no credit would have been allowed for taxpayers with adjusted gross income of $50,000 or more (rather than $60,000 or more).

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[2] S. Rep. No. 95-1066, 95th Cong., 2d Sess. (1978).

[3] H.R. Rep. No. 95-1682, 95th Cong., 2d Sess. (1978). A similar provision was contained in the Senate version of the Revenue Act of 1978, but was deleted in conference. (See, H.R. Rep. No. 95-1800, 95th Cong., 2d Sess. (1978).)

[4] H.R. Rep. No. 95-1790, 95th Cong., 2d Sess. (1978).

IV. DESCRIPTION OF THE BILL

A. General Provisions

Congressional findings

The bill contains a policy statement that sets forth propositions that are based upon a Congressional finding that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. This policy statement concludes that the primary purpose of the bill would be to enhance equality of educational opportunity, diversity, and choice for Americans.

Credit for tuition expenses

Under the bill, an individual would be allowed to claim a nonrefundable tax credit for 50 percent of certain tuition expenses paid during the taxable year to one or more eligible private educational institutions. Credits would be allowed only with respect to tuition paid for certain dependents who are under age 20 at the close of the taxable year in which the expenses are paid and with respect to whom the individual is permitted to claim dependency exemptions. Provided that over half of his or her support is received from the taxpayer, the payment of tuition expenses for (1) a son or daughter or a descendant of either, (2) a stepson or stepdaughter, (3) a brother, sister, stepbrother, or stepsister, (4) a son or daughter of a brother or sister, or (5) an individual (other than the taxpayer's spouse) who has as his or her principal place of abode the home of the taxpayer and who is a member of the taxpayer's household, would qualify for the credit. Except for the taxpayer's children, these individuals would be required to have less than $1,000 of gross income for the calendar year in order to be claimed as dependents.

Eligible educational institutions and qualified tuition expenses

The credit would be available only with respect to tuition paid to certain educational institutions. An educational institution would be required to meet the following requirements in order for tuition paid to it to be a creditable expense:

(1) It must provide a full-time program of elementary or secondary education;

(2) It must be a privately operated, not-for-profit, day or residential school; and

(3) It must be exempt from taxation under Code section 501(a) as an organization described in section 501(c)(3).[1] (This includes

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[1] These are organizations that are organized and operated exclusively for religious, charitable, educational, or other enumerated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and which meet certain other specified requirements.

church-operated schools that currently are exempt from the requirement that applications for recognition of tax-exempt status be filed with the Internal Revenue Service.)

While the bill would not require a private school to have by-laws, advertisements, admission application forms, or other such publications, if an institution does have any such publications they would be required to include a statement that the institution does not discriminate against applicants or students on the basis of race. The form or manner for making this statement is to be prescribed by Treasury Regulations.

Tuition expenses eligible for the credit would be tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including required fees for courses. However, amounts paid for (1) books, supplies, and equipment for courses of instruction; (2) meals, lodging, transportation, or personal living expenses; (3) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution; and (4) education beyond the twelfth-grade level would not be eligible for the credit.

Limitations on credit amount

The credit would be subject both to a maximum dollar amount and a limitation based upon the amount of a taxpayer's adjusted gross income. Both the maximum dollar amount of the credit and the maximum income limitation would be phased in over a three-year period.

The maximum credit allowable to a taxpayer with respect to tuition expenses paid on behalf of each dependent would be:

(1) $100 in the case of tuition expenses paid or incurred after July 31, 1983, in taxable years beginning in 1983;

(2) $200 in the case of tuition expenses paid or incurred in taxable years beginning in 1984; and

(3) $300 in the case of tuition expenses paid or incurred in taxable years beginning in 1985 or later.

A special rule would provide that any tuition tax credits available to any taxpayer could not be taken into account in determining the estimated tax of a taxpayer for any taxable year beginning before January 1, 1984, or in determining the number of withholding exemptions to which any taxpayer would be entitled with respect to remuneration paid before January 1, 1984.

The maximum credit amount would be reduced by a specified percentage of the amount by which a taxpayer's adjusted gross income for the taxable year exceeds $40,000 ($20,000 in the case of a married individual filing a separate return). The phase-out rate would be .5 percent for taxable years beginning in 1983; 1.0 percent for taxable years beginning in 1984, and 1.5 percent for taxable years beginning in 1985 and thereafter. These percentage phase-out rates would be doubled for married individuals filing separate returns. Thus, for taxable years beginning in 1985, a taxpayer with adjusted gross income of $60,000 or more ($30,000 in the case of a married individual filing a separate return) would receive no tax credit.

Special rules

Under the bill, otherwise eligible tuition expenses would be reduced by certain amounts paid to the taxpayer or his dependents. These amounts are: (1) amounts received from tax-free scholarships or fellowship grants; (2) certain Veterans' benefits; and (3) other tax-exempt educational financial assistance (except for excluded gifts, bequests, devises, or inheritances). If the scholarship is paid directly to the school and the school sends a bill for tuition to the taxpayer that is net of the scholarship, the taxpayer would not be deemed to have been paid the scholarship; the scholarship would be excluded from the computation of tuition expense.

B. Anti-discrimination Provisions

Overview

No tax credit would be permitted for tuition payments to schools that follow racially discriminatory policies. The bill would define the term "race" to include color or national origin.

Under the bill, an educational institution would be treated as following a racially discriminatory policy if it refused, on account of race: (1) to admit applicants as students; (2) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or (3) to allow students to participate in its scholarship, loan, athletic, or other programs.

A racially discriminatory policy would not include failure to pursue or achieve any racial quota, proportion, or representation in the student body.

Required publication of nondiscriminatory policy and report to Treasury Department

Eligible schools would be required to include a statement of nondiscriminatory policy in all published by-laws, application forms, advertising, or other such published documents.

The bill would also require a school to file annually with the Treasury Department a statement declaring that it had not followed a racially discriminatory policy and indicating whether a judgment declaring that the school had followed a racialy discriminatory policy was in effect. The statement would have to indicate whether the school had complied with the requirement that it include a statement of nondiscriminatory policy in its published by-laws, application forms, advertising, etc. Additionally, a copy of the nondiscrimination statement would generally have to be furnished to each person paying tuition to the school. A copy of the statement would have to be attached to the tax return of each person claiming a credit for tuition paid to the school.

Enforcement proceedings

Under the bill, the Attorney General would be responsible for determining whether a school followed a racially discriminatory policy.[2] The Attorney General would be authorized and directed to seek a declaratory judgment against a school after receiving a written allegation of discrimination filed by a complainant against the school and finding good cause. This written allegation would be required to allege with specificity that (1) the school had committed a racially discriminatory act against a student applicant or student within one year preceding the date on which the allegation was made, or (2) that the school had made a communication within one year preceding the date on which the allegation was made, expressing that the school follows a racially discriminatory policy.

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[2] The bill, as printed, contains a typographical error on page 6, line 7. The correct text of the bill, as introduced on February 17, 1983, appears on page S1336 of the Congressional Record for that day.

The Attorney General would be required, upon receipt of a written allegation, promptly to notify the school, in writing, of the existence of the allegation. Before commencing a declaratory judgment proceeding, the Attorney General also would be required to give the school a fair opportunity to comment on the allegations made against it by the complainant and to show that the racially discriminatory policy alleged in the written allegation either did not exist or had been abandoned.

If the Attorney General decided not to seek a declaratory judgment against the school, he would be required to make available to the complainant the information on which he based his decision, including any relevant information submitted by the school. He would not be required or authorized, however, to make available any information the disclosure of which would violate any Federal or State law protecting personal privacy or confidentiality.

Instead of seeking a declaratory judgment, the Attorney General could, in his discretion, enter into a settlement agreement with a school against which an allegation of discrimination had been made. However, before doing so, the Attorney General would be required to find that the school had been acting in good faith and had abandoned its racially discriminatory policy. A copy of any settlement agreement would be required to be furnished to the complainant whose allegations resulted in the Attorney General's investigation. If the school violated the settlement agreement, then no subsequent allegation would need to be filed before the Attorney General could initiate a declaratory judgment proceeding or commence a proceeding to enforce the terms of the settlement.

Attorneys' fees

The bill would authorize the district court to award costs and reasonable attorneys' fees to a school prevailing in a declaratory judgment proceeding brought by the Attorney General.

Discontinuance of racially discriminatory policy

The bill provides that a school against which a declaratory judgment had been rendered could, at any time after one year from the date of the judgment, file with the district court a motion to modify the judgment to include a declaration that the school no longer followed a racially discriminatory policy. The motion by the school would be granted, and tuition paid to the school that is otherwise qualified would again become eligible for tax credits, unless the Attorney General established that the declaration by the school was false, or that the school had, within the preceding year, (1) committed a racially discriminatory act against a student or applicant, (2) communicated that it followed a discriminatory policy, or (3) engaged in a pattern of conduct to implement such a racially discriminatory policy.

Period of disallowance of tax credits

No credits would be allowed for amounts paid to a school during the period in which a declaratory judgment against the school was in effect. Generally, a declaratory judgment would be effective beginning with the calendar year in which it was entered by the district court, whether or not it was appealed. The period of disallowance would end only if a motion to reinstate credits was granted by the district court. In that event, credits would again be allowed beginning with the year the motion was granted by the district court, whether or not that motion was appealed.

Annual report by Attorney General

The bill would require the Attorney General to make an annual report to the Congress on his activities regarding enforcement of the anti-discrimination provisions.

Credit not to be considered as Federal assistance

The bill provides that tuition tax credits would not constitute Federal financial assistance to educational institutions or the recipients thereof.

C. Effective Date

The bill generally would be effective for tuition payments made after July 31, 1983. However, no credits would be allowable until either a final decision of the Supreme Court of the United States or an Act of Congress prohibits the granting of a tax exemption under Code section 501(a) by reason of section 501(c)(3) to private educational institutions maintaining a racially discriminatory policy or practice as to students.

D. Revenue Effect

It is estimated that the bill would reduce budget receipts by $245 million in fiscal year 1984, $526 million in fiscal year 1985, $753 million in fiscal year 1986, $779 million in fiscal year 1987, and $763 million in fiscal year 1988.

II

98TH CONGRESS
1ST SESSION

S. 528

To amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17 (legislative day, FEBRUARY 14), 1983

Mr. DOLE (for himself, Mr. PACKWOOD, Mr. MOYNIHAN, Mr. ROTH, and Mr. D'AMATO) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Educational Opportunity and Equity Act of 1983".

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. Therefore, this Act recognizes that—

(1) pluralism is one of the great strengths of American society, diversity in education is an important contributor to that pluralism, and nonpublic schools play an indispensable role in making that diversity possible;

(2) the existence and availability of alternatives to public education tend to strengthen public education through competition and to improve the educational opportunities of all Americans;

(3) Americans should have equal opportunities to choose between the education offered by public schools and available in private educational systems and should not be compelled because of economic circumstances to accept education provided by government-created and government-operated school systems, and to force such a selection is an unfair and unjust discrimination against persons of lesser means;

(4) increasing numbers of American families are unable to afford nonpublic school tuition in addition to the State and local taxes that go to support public schools, and tax relief for nonpublic school tuition expenses is necessary if American families are to continue to have a meaningful choice between public and private education at the elementary and secondary levels;

(5) tax relief in the form of tuition tax credits is the fairest way to extend a choice in education to a wide range of individuals, tax relief in the form of tuition tax credits creates the least possible danger of interference in the lives of individuals and families consistent with achieving these ends, and tax relief in the form of tuition tax credits achieves these ends with a minimum of complexity so that those for whom the tax relief is intended will be able to understand and take advantage of it;

(6) the tax revenue loss occasioned by a tuition tax credit for a child would be small compared to the cost to State and local taxpayers of educating the child at a public school; and

(7) equality of educational opportunity is the policy of the United States, and the tax relief afforded by this legislation should not be used to promote racial discrimination.

The Congress finds that this Act will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

(b) PURPOSE.—The primary purpose of this Act is to enhance equality of educational opportunity, diversity, and choice for Americans.

SEC. 3. CREDIT FOR TUITION EXPENSES.

(a) In General.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting after section 44G the following new section:

"SEC. 44H. CREDIT FOR TUITION EXPENSES.

"(a) General Rule.—At the election of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the qualified tuition expenses paid by such individual during the taxable year for any qualified dependent.

"(b) Limitations.—

"(1) Maximum dollar amount per qualified dependent.—

"(A) In general.—The amount of the credit allowable to the taxpayer under subsection (a) with respect to any qualified dependent for any taxable year shall not exceed the applicable amount.

"(B) Applicable amount.—For purposes of this paragraph, the term 'applicable amount' means the excess, if any, of—

"(i) $300, over

"(ii) 1.5 percent (3 percent in the case of a married individual who does not file a joint return) of the amount, if any, by which the adjusted gross income of the taxpayer for the taxable year exceeds $40,000 ($20,000 in the case of such married individual).

"(C) TRANSITIONAL RULE.—For taxable years beginning after December 31, 1982, and before January 1, 1985, subparagraph (B) shall be applied—

"(i) in taxable years beginning in 1983, by substituting—

"(I) '$100' for '$300',

"(II) '0.5 percent' for '1.5 percent', and

"(III) '1 percent' for '3 percent', and

"(ii) in taxable years beginning in 1984, by substituting—

"(I) '$200' for '$300',

"(II) '1 percent' for '1.5 percent', and

"(III) '2 percent' for '3 percent'.

"(2) Credit not to exceed tax liability.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than credits allowable by sections 31, 39, and 43.

"(c) Credit Denied for Amounts Paid to Racially Discriminatory Institutions.—

"(1) Declaratory judgment entered.—

"(A) In general.—Credit shall be allowed under this section for any amount paid to an educational institution during any taxable year if—

"(i) within the calendar year ending with or within such taxable year or in any preceding calendar year—

"(I) a judgment has been entered by a district court of the United States under section 7408 (regardless of whether such judgment is appealed) declaring that such educational institution follows a racially discriminatory policy, or

"(II) an order by any United States Court of Appeals has been made which, by its terms, requires the district court to enter such a judgment, and

"(ii) no order described in section 7408(f)(2) with respect to such educational institution has been entered which is in effect for the calendar year ending with or within such taxable year.

"(B) REVERSALS OF DECLARATORY JUDGMENTS OR ORDERS.—

"(i) IN GENERAL.—A judgment or order described in subparagraph (A)(i) entered in an action brought with respect to an educational institution shall not be taken into account under subparagraph (A) for any taxable year if, after all appeals in such action have been concluded or the time for filing such appeals has expired, the declaration contained in such judgment, or required to be entered under the terms of such order, that such institution has followed a racially discriminatory policy is negated (other than by reason of an order described in section 7408(f)(2)).

"(ii) WAIVER OF LIMITATIONS.—Notwithstanding section 6511(a) or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by this chapter which arises by reason of this subparagraph may be filed by any person at any time within the 1-year period beginning on the earlier of—

"(I) the date on which all appeals with respect to the judgment or order described in subparagraph (A)(i) have been concluded, or

"(II) the date on which the time for such appeals has expired.

Sections 6511(b) and 6514 shall not apply to any claim for credit or refund filed under this subparagraph within such 1-year period.

"(C) STAY OF DECLARATORY JUDGMENT.—

"(i) IN GENERAL.—Any judgment or order described in subparagraph (A)(i) shall not be taken into account under subparagraph (A) for any taxable year if such judgment or order is stayed as of the close of such taxable year.

"(ii) REMOVAL OF STAY.—If a stay entered against a judgment or order described in subparagraph (A)(i) is vacated—

"(I) this subparagraph shall not apply with respect to such judgment or order for any taxable year preceding the taxable year in which such stay is vacated, and

"(II) notwithstanding any other provision of this title or of any other law, the statutory period for the assessment of a deficiency attributable to the disallowance of any credit under this section by reason of this clause shall not expire before the date which is 3 years after the close of the calendar year in which such stay is removed.

"(D) WAIVER OF LIMITATIONS IF INSTITUTION CEASES TO DISCRIMINATE.—Notwithstanding section 6511(a) or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by this chapter which arises by reason of a reversal of any order denying a motion under section 7408(f)(1)(A) may be filed by any person at any time within the 1-year period beginning on the date on which such reversal is made. Sections 6511(B) and 6514 shall not apply to any claim for credit or refund filed under this subparagraph within such 1-year period.

"(2) REQUIRED STATEMENTS.—

"(A) STATEMENTS FURNISHED BY INSTITUTIONS TO THE SECRETARY.—No credit shall be allowed under subsection (a) for amounts paid to any educational institution during the taxable year if such educational institution has not filed with the Secretary (in such manner and form as the Secretary shall by regulation prescribe) within 30 days after the close of the calendar year ending with or within such taxable year a verified statement which—

"(i) declares that such institution has not followed a racially discriminatory policy during such calendar year;

"(ii) indicates whether—

"(I) a declaratory judgment or order described in paragraph (1)(A)(i) has been entered against such institution in an action brought under section 7408;

"(II) a stay against such judgment or order is in effect; and

"(III) an order described in section 7408(f)(2) is in effect; and "(iii) attests that such institution has complied with the requirements of subsection (d)(3)(D) during such calendar year.

"(B) STATEMENTS FURNISHED TO TAXPAYERS.—Except as otherwise provided by regulations, within 30 days after the close of the calendar year to which the statement described in subparagraph (A) relates, the educational institution shall furnish a copy of such statement to all persons who paid tuition expenses to the institution in the calendar year to which such statement relates.

"(C) STATEMENTS FURNISHED BY TAXPAYERS TO THE SECRETARY.—No credit shall be allowed to a taxpayer under subsection (a) for amounts paid to an educational institution during the taxable year if the taxpayer does not attach to the return on which the taxpayer claims the credit the statement described in subparagraph (A) which is furnished by such institution for the calendar year ending with or within such taxable year of the taxpayer.

"(3) ENFORCEMENT RESPONSIBILITY.—The Attorney General shall have exclusive authority under this subsection to investigate and to determine whether an educational institution is following a racially discriminatory policy.

"(4) RACIALLY DISCRIMINATORY POLICY.—For purposes of this subsection—

"(A) IN GENERAL.—An educational institution follows a racially discriminatory policy if such institution refuses, on the basis of race, to—

"(i) admit applicants as students;

"(ii) admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

"(iii) allow students to participate in its scholarship, loan, athletic, or other programs.

"(B) QUOTAS, ETC.—The term 'racially discriminatory policy' shall not include failure of any educational institution to pursue or achieve any racial quota, proportion, or representation in the student body.

"(C) RACE.—The term 'race' shall include color or national origin.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED TUITION EXPENSES.—The term 'qualified tuition expenses' means the excess of—

"(A) the amount of tuition expenses paid by the taxpayer during the taxable year to any eligible educational institution for any qualified dependent of such taxpayer, over

"(B) any scholarship or financial assistance paid during such taxable year to such qualified dependent or to the taxpayer with respect to such qualified dependent.

"(2) QUALIFIED DEPENDENT.—The term 'qualified dependent' means any individual—

"(A) who is a dependent of the taxpayer (other than an individual described in paragraph (4), (5), (7), or (8) of section 152(a)),

"(B) who has not attained 20 years of age at the close of the taxable year, and

"(C) with respect to whom a deduction under section 151 is allowable to the taxpayer for the taxable year.

"(3) ELIGIBLE EDUCATION INSTITUTION.—The term 'eligible educational institution' means an eductional institution—

"(A) which provides a full-time program of elementary or secondary education;

"(B) which is a privately operated, not-for-profit, day or residential school;

"(C) which is exempt from taxation under section 501(a) as an organization described in section 501(c)(3), including church-operated schools to which subsections (a) and (b) of section 508 do not apply; and

"(D) which includes in any published bylaws, advertisements, admission application forms, and other such published materials, a statement (in such form and manner as the Secretary may by regulations prescribe) that it does not discriminate against student applicants or students on the basis of race.

"(4) TUITION EXPENSES.—

"(A) IN GENERAL.—The term 'tuition expenses' means tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including required fees for courses.

"(B) CERTAIN EXPENSES EXCLUDED.—The term 'tuition expenses' does not include any amount paid for—

"(i) books, supplies, and equipment for courses of instruction;

"(ii) meals, lodging, transportation, or personal living expenses;

"(iii) education below the first-grade-level; or

"(iv) education above the twelfth-grade level.

"(5) SCHOLARSHIP OR FINANCIAL ASSISTANCE.—The term 'scholarship or financial assistance' means—

"(A) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which is not includible in gross income under section 117;

"(B) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code; or

"(C) other financial assistance which—

"(i) is for educational expenses, or attributable to attendance at an educational institution, and

"(ii) is exempt from income taxation by any law of the United States (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

"(e) ELECTION.—The election provided under subsection (a) shall be made at such time and in such manner as the Secretary shall by regulations prescribe."

"(b) DISCLOSURE OF INFORMATION TO ATTORNEY GENERAL.—Subsection (h) of section 6103 of such Code (relating to disclosure to certain Federal officers and employees for tax administration purposes) is amended by adding at the end thereof the following new paragraph:

"(6) CERTAIN INVESTIGATIONS AND PROCEEDINGS REGARDING RACIALLY DISCRIMINATORY POLICIES.—Upon the request of the Attorney General or the Secretary's own motion, the Secretary shall disclose any return or return information which is relevant to—

"(A) any investigation conducted by the Attorney General under section 44H(c) with regard to whether an educational institution is following a racially discriminatory policy (within the meaning of section 44H(c)(4)), or

"(B) any proceeding which may be brought under section 7408,

to any officer or employee of the Department of Justice who is directly and personally involved in such investigation or in preparation for such a proceeding.".

(c) CONFORMING AMENDMENT.—

"(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 44G the following:

"Sec. 44H. Tuition expenses."

"(2) Section 6504 of such Code (relating to cross references with respect to periods of limitation) is amended by adding at the end thereof the following new paragraph:

"(12) For disallowance of tuition tax credits because of a declaratory judgment that a school follows a racially discriminatory policy, see section 44H(c)."

SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

(a) IN GENERAL.—Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"Sec. 7408. Declaratory judgment relating to racially discriminatory policies of schools.

"(a) IN GENERAL.—Upon filing of an appropriate pleading by the Attorney General under subsection (b), the district court of the United States for the district in which an educational institution is located may make a declaration with respect to whether such institution follows a racially discriminatory policy. Any such declaration shall have the force and effect of a final judgment of the district court and shall be reviewable as such.

"(b) Filing of Pleading.—

"(1) In general.—The Attorney General is authorized and directed to seek a declaratory judgment under subsection (a) against any educational institution upon—

"(A) receipt by the Attorney General within the previous 1-year period of any allegation of discrimination against such institution, and

"(B) a finding by the Attorney General of good cause.

"(2) Allegation of discrimination.—For purposes of this section, the term 'allegation of discrimination' means an allegation made in writing by any person which alleges with specificity that—

"(A) a named educational institution has committed a racially discriminatory act against a named student applicant or student within one year preceding the date on which such allegation is made to the Attorney General, or

"(B) the educational institution made a communication, within one year preceding such date, expressing that the institution follows a racially discriminatory policy.

"(3) Notice of allegations of discrimination.—Upon receipt of any allegation of discrimination made against an educational institution, the Attorney General shall promptly give written notice of such allegation to such institution.

"(4) OPPORTUNITY TO COMMENT.—Before any action may be filed against an educational institution by the Attorney General under subsection (a), the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the alleged racially discriminatory policy does not exist or has been abandoned.

"(5) AVAILABILITY OF CERTAIN INFORMATION TO COMPLAINANT.—

"(A) IN GENERAL.—If an allegation of discrimination against an educational institution is made to the Attorney General and the Attorney General—

"(i) declines to bring an action under subsection (a) against such institution, or

"(ii) enters into a settlement agreement with such institution under subsection (d) before such an action is brought,

the Attorney General shall make available to the person who made such allegation the information upon which the Attorney General based the decision not to bring such an action or to enter into such settlement agreement. The Attorney General shall promptly give written notice to such person that such information is available for his inspection.

"(B) PRIVACY LAWS.—Nothing in this paragraph shall be construed to authorize or require the Attorney General to disclose any information if such disclosure would violate any applicable State or Federal law relating to privacy.

"(c) REQUIREMENTS FOR A FINDING OF FOLLOWING A RACIALLY DISCRIMINATORY POLICY.—A district court may declare that an educational institution follows a racially discriminatory policy in an action brought under subsection (a) only if the Attorney General establishes in such action that—

"(1) the institution has, pursuant to such policy, committed a racially discriminatory act against a student applicant or student within the 2 years preceding commencement of such action;

"(2) the institution has, within the 2 years preceding commencement of such action, made a communication expressing that it follows a racially discriminatory policy against student applicants or students; or

"(3) the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and that some act in furtherance of this pattern of conduct was committed within 2 years preceding commencement of such action.

"(d) SETTLEMENTS.—

"(1) IN GENERAL.—Prior to, and in lieu of, filing an action under subsection (a), the Attorney General may, at his discretion, enter into a settlement agreement with the educational institution against which an allegation of discrimination has been made if the Attorney General finds that the institution has been acting in good faith and has abandoned its racially discriminatory policy.

"(2) VIOLATION OF SETTLEMENT AGREEMENT.—If the Attorney General has entered into a settlement agreement with an educational institution under paragraph (1) and the Attorney General finds that such institution is in violation of such agreement, the Attorney General may—

"(A) notwithstanding subsection (b)(1)(A), bring an action under subsection (a) without having received any allegation of discrimination against such institution, or

"(B) bring an action to enforce the terms of such agreement.

"(3) COPY OF SETTLEMENT AGREEMENT TO COMPLAINANT.—The Attorney General shall give a copy of any settlement agreement which is entered into with any educational institution under paragraph (1) to any person from whom the Attorney General has received an allegation of discrimination against such institution.

"(e) RETENTION OF JURISDICTION.—Any district court which makes a declaration under subsection (a) that an educational institution follows a racially discriminatory policy shall retain jurisdiction of such case.

"(f) DISCONTINUANCE OF RACIALLY DISCRIMINATORY POLICY.—

"(1) Motion.—

"(A) IN GENERAL.—At any time after the date which is 1 year after the date on which a judgment is entered in an action brought under subsection (a) declaring that an educational institution follows a racially discriminatory policy, such institution may file with the district court a motion to modify such judgment to include a declaration that such institution no longer follows a racially discriminatory policy.

"(B) AFFIDAVITS.—Any motion filed under subparagraph (A) shall contain affidavits—

"(i) describing with specificity the ways in which the educational institution has abandoned its previous racially discriminatory policy;

"(ii) describing with specificity the ways in which such institution has taken reasonable steps to communicate its policy of nondiscrimination to students, to faculty, to school administrators, and to the public in the area it serves;

"(iii) averring that such institution has not, during the preceding year—

"(I) committed a racially discriminatory act against a student applicant or student pursuant to a racially discriminatory policy;

"(II) made a communication expressing that it follows a racially discriminatory policy against student applicants or students; or

"(III) engaged in a pattern of conduct intended to implement a racially discriminatory policy, and committed some act in furtherance of this pattern of conduct; and "(iv) averring that such institution has complied with the requirements of section 44H(d)(3)(D).

"(2) ORDER.—If a motion is made under paragraph (1), the district court shall issue an order modifying the judgment entered in the action to include a declaration that the educational institution no longer follows a racially discriminatory policy unless the Attorney General establishes that—

"(A) any affidavit provided by the institution under paragraph (1)(B) is false;

"(B) the institution has, during the preceding year, committed any act, made any communication, or engaged in any pattern of conduct described in paragraph (1)(B)(iii); or

"(C) the institution has not, in fact, complied with the requirements of clauses (ii) and (iv) of paragraph (1)(B).

"(3) APPEAL OF ORDERS.—Any order of the district court granting or denying a motion made under paragraph (1) shall be reviewable.

"(g) ATTORNEYS' FEES.—If an educational institution prevails in an action under this section, the court may award the institution costs and reasonable attorneys' fees in such action.

"(h) DEFINITIONS.—For purposes of this section—

"(1) RACIALLY DISCRIMINATORY POLICY.—The term 'racially discriminatory policy' has the meaning given to such term by section 44H(c)(4).

"(2) RACIALLY DISCRIMINATORY ACT.—

"(A) IN GENERAL.—An educational institution commits a racially discriminatory act if such institution refuses, on the basis of race, to—

"(i) admit any applicant as a student;

"(ii) admit any student to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

"(iii) allow any student to participate in its scholarship, loan, athletic, or other progams.

"(B) QUOTAS, ETC.—The term 'racially discriminatory act' shall not include the failure of such institution to pursue or achieve any racial quota, proportion, or representation in the student body.

"(C) RACE.—The term 'race' shall include color or national origin.

"(i) REPORT.—Within 90 days of the close of each calendar year, the Attorney General shall submit a report to the

Congress concerning the disposition during such calendar year of—

"(1) any allegations of discrimination received by the Attorney General, and

"(2) any actions brought under this section.".

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for subchapter A of chapter 76 of such Code (relating to civil actions by the United States) is amended by striking out the item relating to section 7408 and inserting in lieu thereof:

"Sec. 7408. Declaratory judgment relating to racially discriminatory policies of schools.
"Sec. 7409. Cross references.".

(2) Section 2201 of title 28, United States Code (relating to creation of declaratory judgment remedy) is amended by striking out "section 7428" and inserting in lieu thereof "section 7408 or 7428".

SEC. 5. TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

Tax credits claimed under section 44H of the Internal Revenue Code of 1954 shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits.

SEC. 6. EFFECTIVE DATE: SPECIAL RULE.

(a) CERTIFICATION REQUIRED.—The amendments made by this Act shall not take effect until the Attorney

General certifies to the Secretary of the Treasury that, pursuant to—

(1) an Act of Congress which has been enacted, or

(2) a final decision of the United States Supreme Court, the Internal Revenue Code of 1954 prohibits the granting of tax exemption under section 501(a) by reason of section 501(c)(3) to private educational institutions maintaining a racially discriminatory policy or practice as to students.

(b) APPLICATION WHEN CERTIFICATION IS MADE.—

(1) IN GENERAL.—If the certification described in subsection (a) is made to the Secretary of the Treasury—

(A) except as provided in paragraph (2), the amendments made by section 3 shall apply with respect to expenditures made after the date on which such certification is made to the Secretary of the Treasury in taxable years beginning after December 31, 1982, and ending after such date, and

(B) the amendments made by section 4 shall take effect on the date on which such certification is made to the Secretary of the Treasury.

(2) NO APPLICATION BEFORE JULY 31, 1983.—In no event shall the amendments made by section 3 apply with respect to expenditures made before August 1, 1983.

(c) ESTIMATED INCOME TAX AND WAGE WITHHOLDING.—

(1) ESTIMATED INCOME TAX.—Any credit allowable to any taxpayer under section 44H of the Internal Revenue Code of 1954 shall not be taken into account under section 6015(d) in determining the estimated tax of such taxpayer for any taxable year beginning before January 1, 1984.

(2) WAGE WITHHOLDING.—Any credit allowable under section 44H of such Code shall not be taken into account in determining the number of withholding exemptions to which any taxpayer is entitled under section 3402 of such Code with respect to remuneration paid before January 1, 1984.

The **Chairman**. I would include a statement in the record and just say, in summary:

"Our Nation is at risk. Our once unchallenged preeminence in commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world." These are not my words, but exerpts from "A Nation at Risk," a report of the National Commission on Excellence in Education, released just this week at the White House.

The National Commission report is sobering reading. The Commission found that the average achievement of high school students on most standardized tests is now lower than it was 26 years ago when Sputnik was launched. In addition, the Commission found that over half the population of gifted students failed to match their tested ability with comparable achievement in the schools.

So I just suggest that perhaps these hearings may be timely for that reason. I would also say that I have introduced the administration's tax credit bill, for myself and on behalf of Senators Packwood, Moynihan, Roth, and D'Amato.

Tuition tax credit legislation has always been controversial. Both proponents and opponents of tuition tax credit legislation have strongly felt views on all of the critical issues this proposed legislation raises.

Tuition tax credits are championed, and challenged, on educational policy grounds. They are championed, and challenged, in terms of their relationship to the 1st and 14th amendments to the Constitution. They are championed, and challenged, in terms of their impact on tax policy. And they are championed, and challenged, in terms of their overall budgetary impact.

One thing is certain: as the old adage goes, "If you think education is expensive, try ignorance." Or, as the National Commission put it, "Excellence costs—but in the long run mediocrity costs far more."

We have a number of witnesses today, and I would say to the witnesses that we have had hearings on this bill as recently as last July. Many of the same witnesses will be going over the same material. It is my hope that you can very quickly summarize your statements; they will be made a part of the record.

I would hope we are not trying to shut anyone off, and if those who are not testifying personally would like to submit for the record statements for or against the legislation, obviously the record will remain open.

I support tuition tax credits in principle, but I would not support any bill without adequate safeguards insuring that tax credits would not be allowed for payments to private schools with racially discriminatory policies or practices.

We did do a careful review last year of the different proposals, and I believe that the final product of this committee was a set of antidiscrimination rules that were very strong. The bill before us is substantially the same as the bill reported last September by the Finance Committee, with some minor modifications and technical corrections.

There are budgetary considerations, and certainly that is a matter that we are looking at not only here but throughout the

Government. We are told by the administration that when the bill is fully effective, in fiscal year 1986, it will cost less than $800 million each year.

Many supporters of tuition tax credits feel that private school tuition assistance should be available to individuals with no tax liability, so we will get into the question of whether or not there should be refundability, and I expect this will be considered by the committee. There are, of course, differing views. The administration does not support refundability, and I am not certain what will be the outcome.

In preparation for today's Finance Committee hearing on tuition tax credits for private elementary and secondary schools, I asked the Congressional Research Service to prepare a revenue estimate of the amount of Federal tax expenditures subsidizing public school districts. The CRS estimate which I am releasing today indicates that $13.7 billion in tax subsidies will be provided to public school districts in fiscal year 1983, largely through tax deductions permitted for State and local taxes, and through the nontaxability of interest on certain State and local bonds.

The administration's tuition tax credit bill is estimated by the staff of the Joint Committee on Taxation to cost less than $800 million when fully phased in.

I will make the information, the "Estimate of Federal Tax Expenditures Subject to School Districts," a part of the record, and that will be made available to members of the committee.

Senator Moynihan, do you have any opening comments?

Senator **Moynihan**. I do—very brief.

Mr. Chairman, I have a statement that I would like to put in the record.

I would like, first, to thank you for holding these hearings. We have come a very considerable distance in this matter from the time Senator Packwood and I proposed specific legislation in 1977, which legislation was reported out of this committee 14-1. It passed the House and almost passed the Senate.

I have been with this matter for a long time, and I am happy to think that I may have a 25th anniversary before too long.

In 1961 when President Kennedy proposed the first measure of Federal aid to education, this was a central issue—whether it would go to all schools or simply to the schools that are Government-supported. And the debate has been going on since.

There has been some progress—not a great deal. The main progress is, I think it is fair to say, that where 25 years ago no legal scholars much questioned the series of court cases in this matter that began in 1948, and only in 1948, today it is generally agreed that the court cases are a shambles. The Supreme Court is solemnly required to distinguish between the nature of Federal aid to a freshman in a college as against a senior in a high school, and to do so in terms of susceptibility to religious indoctrination, which is not much of a grounds for the courts.

Finally, Mr. Chairman, let me say this: We are never going to get through this question if we continue to recognize a wholly artificial distinction between "public schools" and "private schools." The schools that are designed to be aided by your legislation—which I am happy to cosponsor—are in every respect "public" institutions. They are as public as the hospitals associated with the same. The Lutheran and Methodist and Presbyterian and Catholic and Jewish hospitals are in every sense public hospitals, and are thought to be such. So are their schools.

Remember, these schools predate "public schools"—as they are now called—and to give them different names is to confer a different status. I think if we could overcome this misconception, we would clear up a lot of confusion.

I thank you very much for your careful attention to my remarks.

The CHAIRMAN. Thank you.

Senator Boren, do you have an opening statement?

Senator BOREN. Yes. Thank you, Mr. Chairman. I appreciate the opportunity to make an opening statement on this matter.

I think it is unfortunate that the administration has decided to again pursue its tuition tax credit proposal. Frankly, I had hoped that with the demise of this legislation in the ninety-seventh Congress we had seen the last of it.

At the outset I want to make it clear that I am opposed to tuition tax credits, primarily because of the negative effect which I believe they would have on our public education system. No one believes any more strongly than I do that parents have the right to send their children to a private school if they so choose. It is one thing to have that right, however, but quite another to expect the Federal Government to encourage and support it through the tax system. I do not believe that the Federal Government has the obligation to provide direct financial assistance for private education.

I want to direct my comments today to the impact which I believe this proposal would have on the public schools. It is both ironic and regrettable that, at a time when we should be searching for ways to revitalize and upgrade the Nation's public education system, we are holding these hearings on a proposal which, in my opinion, only undermines that system.

The just-released report of the National Commission on Excellence in Education has focused attention on the major challenges we face in educating the next generation of America's leaders.

As we all know, the task of achieving excellence in education is certainly not an easy one. Nothing short of a determined national effort will succeed in keeping our educational system in step with the rapid changes taking place in the world.

I hope, Mr. Chairman, that every Member of Congress has read the report of the Commission on Excellence in Education, and has noticed the disastrous decline in the standardized test scores of American students.

Public education has been a powerful force in our national development. America's preeminence in world affairs has been achieved largely because of the Nation's investment in public education. We have invested not only our financial resources but our national will in support of free public education for all of our citizens.

Now, at a time when America's preeminence and leadership is being challenged, we must rediscover the central importance of the Nation's public school system and the role it plays in producing our scientists, mathematicians, skilled workers, and engineers, to name just a few. Perhaps more importantly, however, I believe that the establishment of a tuition tax system for private schools will lead to an erosion of something which has made our democracy unique; I am speaking here of the role public education has played in bridging gaps and promoting understanding in our society, in building a sense of community in which people from different backgrounds, different economic backgrounds, have been able to come together in a single-classroom experience, in which young people without regard to their race or economic standing have had an opportunity for the best in education in this country, and we have never regarded public education as a second-class alternative. I think this proposal would lead us down the road toward that direction.

In some countries it is the privileged few, the wealthy or those who enjoy majority status, who are permitted an education, or who are permitted the best education.

In this Nation, however, we have committed ourselves to the ideal that all citizens are entitled to a free public education with the highest possible standards.

Many of our greatest leaders, both in private and public sectors, have come from the humblest of origins. For most of these individuals the public schools have provided the means whereby they were able to develop their minds and reach their full potential.

How tragic it would be if we ever lose sight of the fact that public education has contributed so much to our democracy. Out of the shared common experiences of public schools has emerged our national identity.

I firmly believe that we should be acting to reaffirm the importance of public education to our national life by rejecting proposals such as tuition tax credits, for they can only serve to weaken our commitment to the public schools of this country.

The **CHAIRMAN**. Senator Durenberger.

Senator **DURENBERGER**. Thank you, Mr. Chairman.

I would like to keep my statement brief and introduce a longer statement in the record, if I may; but I will just read a part of it.

Having heard Senator Moynihan, briefly, and Senator Boren at greater length, it seems to me we may be doing something this year we didn't do last year, and that is raising the issue of tuition tax credits above the level of a tax credit to the level of education. We obviously have members of this committee to be grateful to for that, and the President, and a variety of other people.

Let me commend you, Mr. Chairman, for offering the administration's legislation, and in particular let me commend the gentlemen on my right, Senators Packwood and Moynihan, for their long-term commitment to improving America's education system.

I applaud the President for making quality and consumer choice in education a priority in his administration. Let me say, while I am saying that, that I don't necessarily agree with a quotation I read in yesterday's Washington Post, allegedly quoting the President to the effect that our agenda is "to restore quality to education." And then he goes on to say, "We'll continue to work"—and, by implication, all of these relate to the quality of education—"for passage of tuition tax credits, vouchers, educational savings accounts, voluntary school prayer, and abolishing the Department of Education."

I think that objective is the reverse side of a national commitment to the quality of education. Some of the other things obviously I do agree with.

I support tuition tax credits because I believe they help all children by fostering diversity, quality, accessibility, and choice in our educational system.

I would say to my colleague from Oklahoma that, quite to the contrary, the quality of education in America and our commitment to public education in the broadest sense will be fostered by the passage of this legislation.

We have traditionally recognized, as Senator Moynihan pointed out, the value of competition in consumer choice in service-delivery areas as diverse as health care, law, airlines, transportation—you name it. It is pretty hard to find an area in which we don't find a value in competition and consumer choice.

Tuition tax credits can be an effective mechanism to strengthen educational delivery systems both in the Government sector and the nongoverment sector, by extending the concept of consumer choice to education at the elementary and secondary level, where in large part it does not exist today.

Giving more families the option of choosing where their children will seek educational opportunities will put competitive pressure on all schools, consumer-oriented pressure to improve the quality of education by improving the quality of choice.

Consumer choice inevitably breeds diversification and innovation. Those who deliver educational services in both the public and private sector will compete for consumer support by developing creative, improved services which are price competitive.

A choice in education means that we are going to have to turn the present system on its head, and recognize that the professionals in education are the teachers, not the managers—the educational profession, not educational administration.

It seems to me it's the only public service area in which the professionals never get to hire the administrators or the managers. If you are a doctor or a lawyer, or some other professional, and you go out to sell your services to the public, you decide who is going to manage the system for you, but you decide also what kind of service is needed. For some reason or another in elementary and secondary education in this country in large part that does not exist.

Tuition tax credits provide teachers with an incentive to develop nontraditional approaches to service delivery along with a clear benchmark by which they can judge the success or failure of those efforts.

But if tax credit legislation is to accomplish these goals it cannot be restricted to families with children enrolled only in nongovernment educational institutions. The program must be structured as assistance to children—all children—not just those who patronize certain classes of institutions.

Last year the State of Minnesota received $2,500,142 in tuition payments from parents with children in the public school system. And with State and local budgets under considerable strain, the use of tuition to assure adequate funding for Government-financed schools is likely to continue.

In short, Mr. Chairman, is there any valid reason why this nation's future system of elementary and secondary education cannot be built on our experience in the last 35 years with higher education in this country?

Tax credits will not be effective in promoting consumer choice unless they apply equally to public and private school tuition. The choice must rest with the family, and it's my intention to offer an amendment to this legislation to extend its scope to tuition charged by both Government and nongoverment schools.

The balance of that statement I would ask be inserted in the record.

The CHAIRMAN. Your entire statement will be included in the record.

Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

I have a longer statement for the record, Mr. Chairman. I would not engage in reading this entire statement, but my concern is also the concern expressed by the distinguished Senator from Oklahoma, Senator Boren.

And my concern also, Mr. Chairman, not only relates to the constitutional pressures, to the constitutional problems, and to the impact, and I would say "adverse impact" ultimately on public education, but also upon the revenue loss that we are looking at if we adopt the administration's measure.

Mr. Chairman, the administration, I think, if my figures are correct, is estimating about a $1.5 billion revenue loss over the next 3 years. I would say that this is a most conservative figure, especially given the Congress institutions propensity to escalate present programs and to enlarge present programs, and to give additional advantages as time goes along. I think if we talk about tuition tax credits we are only talking about a tip of the iceberg in aid for private schools.

Mr. Chairman, this really concerns me. I might say that I'm very proud that we are holding this hearing and have this opportunity this morning to engage in some questions of the witnesses, but I do want to express at this point my opposition to the administration's proposal.

I thank you, Chairman and my colleagues, very much.

The CHAIRMAN. Thank you, Senator Pryor, and your entire statement will be made a part of the record.

Senator Packwood.

Senator PACKWOOD. Thank you, Mr. Chairman.

Senator Moynihan and I have been up and down this trail since 1977 on this issue. I hope that our position has been very clear from the start that public education in our mind comes first. We are not talking about cutting any money out of public education; we do not regard this bill as a threat to public education, and I think if we did we would not support this bill—if we thought it was this and the end of public education, or not this and public education.

There is no empirical or any other evidence that this bill is going to doom to extinction public education in this country.

I support this bill for a variety of reasons, not the least of which is that I think diversity promotes creativity, and certainly diversity protects civil liberties in this country. And I would feel much more comfortable with another 100,000 private schools, denominational and nondenominational, sponsored by a thousand different churches spread all over this country, each jealous and protective of their own rights. I would feel more secure about our civil liberties with that system than if we had no private schools existing in this country.

I fear if private schools do not have some inducement, financial inducement, they will gradually—maybe not this year, maybe not next year, but they will gradually wither and disappear, and America will be the lesser because of it.

Senator Moynihan and I have always realized, now and for the last 6 years, that this bill is not going to pass unless it has not just the wholehearted backing of the administration—any administration—but has the wholehearted 100 percent lobbying effort of that administration. It will do no good if at each news conference the President says, "Yes, I support tuition tax credits"; it will do no good if the President speaks to the Annual Convention of Agudoth Israel, and the Moral Majority, and the Catholic Education Conference, and says, "Yes, I support this."

This bill is only going to pass—and it's going to have to be through a filibuster in the Senate—it will only pass if the President will give to it roughly the same degree of lobbying effort that he gave to his tax bill in 1981, or AWACS, or something of that magnitude. Without that degree of not just leadership but push, this bill will not pass in this Congress, and no one should be deluded that anything less than that will cause the bill to pass.

The CHAIRMAN. Thank you very much, Senator Packwood.

I share your thoughts about what is needed for the bill to pass. I think those who have an interest in its passage are going to have to work a little harder.

Our first witness this morning—I understand Secretary Bell will be here momentarily, so we will ask Assistant Secretary for Tax Policy John Chapoton, Buck Chapoton, who has been before this committee probably more times than he would like to remember to be the first witness.

Again, I would indicate to the witnesses—we just completed action on this bill last September, and it's fairly fresh in our minds. Unless there has been some substantial change in the positions of the witnesses, including the Government witness, we would hope you might quickly summarize your statements so that we might move on to the next witness.

STATEMENT OF HON. JOHN E. CHAPOTON, ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY, WASHINGTON, D.C.

Mr. CHAPOTON. Thank you, Mr. Chairman; I will be very brief.

We are happy to have the opportunity to appear before the committee this morning in support of S. 528. I would just emphasize a couple of the basic purposes.

The basic purpose of this bill and of the tax credit is to enhance equality and diversity of educational opportunity for all Americans at the secondary and elementary schools of their choice.

As you know, Mr. Chairman, the President is personally committed to this legislation and to improving the quality of education and promoting parental participation and control in the education process.

Secretary Regan testified on this matter last year, and as he then stated, "We believe that parents have a fundamental right and responsibility to direct the education of their children in a way which best serves their individual needs and aspirations." The enactment of the tuition tax credit system provided for in this bill will make freedom of choice a reality for many parents, where it is not a reality now, and will let us contribute substantially toward achieving this administration's goal of maintaining the excellence of the American educational system and protecting the rights of American parents to determine how and where their children will be educated.

We appreciate the action of this committee last year in reporting out similar legislation, and we urge you to act favorably on S. 528.

As you know, the bill addresses the double burden placed on parents who pay taxes to support the children of others in the public schools but also pay full tuition for their own children in private schools. Basically, the bill would allow individual taxpayers to take a credit against income tax in an amount equal to 50 percent of the qualifying tuition expenses paid by the taxpayer in the taxable year.

Generally, the credit is allowed only for expenses paid with respect to dependents—children, grandchildren, siblings, nieces, and nephews of the taxpayer—for which a dependency deduction is allowed.

It's a 50-percent credit. The credit is subject to two limits: First, a dollar limit of $300. The 50-percent credit, 50 percent of the tuition expenses, cannot exceed $300. But there is a phase-in; that full $300 is allowed in 1985. The bill would be effective July 31, 1983. For this year the credit would be limited to $100; in 1984 the credit would be limited to $200, and then subject to the full $300 in 1985 and thereafter.

The second limitation is to direct the benefit to less wealthy families by a phase-out of the credit for higher income families. The phase-out begins at an adjusted gross income of $40,000, and is phased out entirely so that no credit would be allowed for taxpayers whose adjusted gross income exceeds $60,000 or more.

Finally, Mr. Chairman, I won't go into all of the details, but there are three separate provisions to insure that no credits will be permitted for amounts paid to schools that follow a racially discriminatory policy. Credit would be denied if the school does not qualify for tax exemption under section 501(c)(3) of the Code, and the effective date is delayed until the Supreme Court acts to make clear that that is the law (that is, that a racially discriminatory policy will prevent a school from qualifying for tax exemption under 501(c)(3)) or legislation is enacted to insure that result.

Second, the school must file an annual statement, under penalties of perjury, with the Treasury that it does not discriminate.

And, third, there is a procedure established in this bill that, upon receipt from any person of an allegation of discrimination by a school, the Attorney General is authorized and directed to seek a declaratory judgment in the U.S. district court for the district in which the school is located, that the school follows a racially discriminatory policy, in which event the credits would be denied for the year that determination is made by the local district court and for all subsequent years until that discriminatory policy is modified.

As I think the points have been made earlier, the revenue impact of the bill is less than $800 million, even when fully effective in 1985. It starts out at $245 million in fiscal year 1984 and goes up to $779 million in fiscal year 1987.

Mr. Chairman, that is a very brief summary of the bill. I see Secretary Bell is here. I would be happy to answer questions.

[The prepared statement of Mr. Chapoton follows:]

For Release Upon Delivery
Expected at 10 a.m. EDT
April 28, 1983

STATEMENT OF
THE HONORABLE JOHN E. CHAPOTON
ASSISTANT SECRETARY (TAX POLICY)
DEPARTMENT OF THE TREASURY
BEFORE THE
SENATE COMMITTEE ON FINANCE

Mr. Chairman and Members of the Committee:

I am pleased to appear before you this morning in support of S. 528, which would provide an income tax credit for 50 percent of certain elementary and secondary school tuition expenses. The tax credit is intended to enhance equality and diversity of educational opportunity for all Americans at the elementary and secondary schools of their choice.

S. 528 addresses an extremely important area of public policy. As you know, the President has taken considerable personal interest in its development. The Administration believes that enactment of tuition tax credit legislation is essential to maintain the excellence of the American educational system and to protect the right of American parents to determine how and where their children will be educated. We appreciate the action of this Committee last year in reporting out a similar bill (H.R. 1635) and we urge you to act favorably on S. 528.

This bill would establish a tuition tax credit system that will fulfill this Administration's commitment to parental responsibility, educational excellence, and fiscal and administrative restraint. The bill will further the educational diversity that is the hallmark of our educational system. It will make educational freedom of choice a reality to more American families. It will target relief to those families that need it most. Finally, it will neither interfere with the operation of private schools nor impose costly administrative and regulatory burdens on them.

Equality of educational opportunity clearly requires that a diverse range of schools -- public and private -- be available to all American families, and that all American families have the financial ability to permit meaningful freedom of choice among schools. As Secretary Regan testified last year, we believe that parents have a fundamental right, and responsibility, to direct the education of their children in a way which best serves their individual needs and aspirations. Moreover, we believe that parental involvement in the decision-making process enhances the quality of education provided.

Private schools are essential to fulfilling our national educational needs. They provide a healthy diversity of approach, and are often a significant source of innovation and experimentation. But tuition at a private school is an additional expense for parents, and inflation has increased this burden. At the same time, higher taxes caused by bracket creep have made it more difficult for families to afford private education. Tuition tax credits offer a simple means to expand the opportunities of private school students by permitting families to spend the money that they have earned for the education they themselves select. It also guarantees the continued independence of private schools, since no Federal agency will be involved in a funding capacity.

This proposal addresses the double burden placed upon parents who pay taxes to support the children of others in public schools but who also pay full tuition for their own children in private schools. Sending their children to the public schools instead would increase the burden on the public schools and further strain scarce financial resources for public education. It is only fair that the burden on parents now suffering this double expense be relieved. This will also avert the possibility that they might be forced through economic circumstance to return their children to the public schools, which would have trouble accommodating them.

Tax credits for tuition expenses have the advantage of providing the same dollar benefit to all taxpayers. In contrast, a deduction would provide a greater benefit for individuals in higher tax brackets.

S. 528 would allow an individual taxpayer to take a credit against income tax in an amount up to 50 percent of the qualifying tuition expenses paid by the taxpayer in a taxable year. Qualifying tuition expenses are expenses paid for tuition and fees to send certain dependents under the age of 20 to private elementary or secondary schools on a full-time basis. Qualifying tuition expenses do not include amounts paid for books, supplies, equipment, meals, lodging, transportation, or personal expenses, or for education below the first-grade level or above the twelfth-grade level.

The credit is allowed only for expenses paid with respect to students for whom the taxpayer is allowed a dependency exemption and who bear any of the following relationships to the taxpayer: children (including adopted children) and descendants; stepchildren; siblings, stepbrothers and stepsisters; nieces and nephews; and members of the taxpayer's household, other than the taxpayer's spouse, whose principal place of abode is the taxpayer's home. To be allowed a dependency exemption, the taxpayer must provide more than half of the student's support for the calendar year in which the taxpayer's taxable year begins and, except for the taxpayer's children and stepchildren, the student must have less gross income than the amount of the exemption.

The amount of the credit that is allowable for the taxable year with respect to a student is subject to two limits. First, the maximum amount of credit that may be claimed by the taxpayer for each student in any taxable year is $100 for expenditures made after July 31, 1983 in taxable years beginning in 1983, $200 for expenditures made in taxable years beginning in 1984, and $300 for expenditures made in taxable years beginning in 1985 and thereafter. These ceiling amounts limit the relative benefit that the credit will provide to parents whose children attend more expensive private schools. Beginning in 1985, parents who send their children to private schools with tuition of $600 or less per year will receive a credit for a full 50 percent of tuition expenses. Parents who send their children to more expensive schools will not be able to claim a credit for additional tuition expenses.

The second limit contained in S. 528 directs the benefit of tuition tax credits to less wealthy families by a phase-out of the credit for higher-income families. The maximum amount of credit per student is reduced as the taxpayer's adjusted gross income increases over $40,000 and is phased out entirely for taxpayers with adjusted gross incomes of $60,000 or over. For taxable years beginning in 1983, the $100 per student maximum credit is reduced by 0.5 percent of the taxpayer's adjusted gross income over $40,000; for taxable years beginning in 1984, the $200 per student maximum credit is reduced by 1 percent of the taxpayer's adjusted gross income over $40,000; and for taxable years beginning in 1985 and thereafter, the $300 per student maximum credit is reduced by 1.5 percent of the taxpayer's adjusted gross income over $40,000.

The amount of tuition expense for which a taxpayer is allowed a credit does not include expenses that are paid by scholarships and other educational aid which are not includible in the taxpayer's or the student's income. If the scholarship is provided directly by or to the school and the school sends a tuition bill to the taxpayer that is net of the amount of the scholarship, the taxpayer is not deemed to have been paid the scholarship; the scholarship is excluded from the computation of tuition expense altogether.

A school with respect to which credits are allowable must provide a full-time elementary or secondary school program and must be a private, not-for-profit, day or residential school. In addition, the school must be exempt from taxation under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) of the Code, and must include in any published materials a statement that it does not discriminate against student applicants or students on the basis of race. Church-operated schools will continue to be exempt, pursuant to section 508(c), from the provisions of section 508(a) and (b), that generally require an organization to apply to the Secretary of the Treasury to be recognized as a section 501(c)(3) organization that is not a private foundation. The fact that credits are claimed for payments to a church-operated school shall not serve as a basis for imposing any new requirements on the school in this regard.

S. 528 contains strong provisions to ensure that no credits will be permitted for amounts paid to schools that follow racially discriminatory policies. A racially discriminatory policy is a policy under which a school refuses, on account of race, to admit applicants as students; to admit students to the rights, privileges, programs and activities generally made available to students by the school; or to allow students to participate in its scholarship, loan, athletic or other programs. A racially discriminatory policy does not include the failure by a school to pursue or achieve any racial quota, proportion, or representation among its students.

Three anti-discrimination enforcement mechanisms have been written into the bill.

First, a tax credit cannot be claimed unless the school is a tax-exempt organization described in section 501(c)(3). As you are aware, litigation now before the Supreme Court will determine whether the Internal Revenue Service has authority to deny tax-exempt status to schools that discriminate on the basis of race. The provisions of S. 528 will not become effective until either a final decision of the Supreme Court or explicit legislation prohibits the granting of tax exemption on the basis of section 501(c)(3) to a school that maintains a racially discriminatory policy or practice as to students.

Second, in order for tuition expenses to be eligible for the credit, the school must file annually with the Treasury a statement under the penalties of perjury that it has not followed a racially discriminatory policy during that calendar year. The school also must include a statement of nondiscrimination in all materials it publishes.

Third, the Attorney General of the United States, upon receipt from any person of an allegation of discrimination by a school, is authorized and directed to seek a declaratory judgment, in the United States district court for the district in which the school is located, that the school follows a racially discriminatory policy. An allegation of discrimination must allege with specificity that, within one year preceding the date on which the allegation is made, a named school has committed a racially discriminatory act against a named student applicant or student or the named school has made a communication expressing that the school follows a racially discriminatory policy. If the Attorney General decides not to bring an action for declaratory judgment or to enter into a settlement agreement before such action is brought, the Attorney General must make the information on which such decision is based available to the person who filed the allegation of discrimination. A settlement agreement may be entered into prior to filing a declaratory judgment action if the Attorney General finds that the school has been acting in good faith and has abandoned its racially discriminatory policy.

A court may declare that a school follows a racially discriminatory policy only if the Attorney General establishes that within 2 years preceding the declaratory judgment action the school, pursuant to a racially discriminatory policy, committed a racially discriminatory act against a student applicant or student, made a communication expressing that it follows a racially discriminatory policy against student applicants or students, or engaged in a pattern of conduct intended to implement a racially discriminatory policy and committed some act in furtherance of this pattern of conduct. If a district court judgment is entered that the school follows a racially discriminatory policy, tuition tax credits are disallowed beginning in the year in which the judgment is entered. If the district court judgment is reversed after all appeals procedures are completed, tuition tax credits are allowed retroactively. If the district court judgment is not appealed or is upheld on appeal, no tuition tax credits are allowed until the year in which the judgment is modified to state that the school no longer follows a racially discriminatory policy. A motion for such modification of the judgment may be filed with the district court at any time that is more than one year after the date on which the judgment was entered. Any such motion must contain affidavits describing the ways in which the school has abandoned its previous racially discriminatory policy, describing the ways in which the school has taken reasonable steps to communicate its policy of nondiscrimination to students, faculty, administrators, and the public in the area it serves, stating that the school has not, during the preceding year, committed an act, made a communication, or engaged in a pattern of conduct that would be the basis for a declaration that the school follows a racially discriminatory policy, and stating that the school has included the required statement of nondiscrimination in all of its published materials.

This triple enforcement mechanism, which reflects the enforcement mechanism in H.R. 1635 as reported out by this Committee last year, will prevent use of tuition tax credits to pay expenses at racially discriminatory schools without interfering in the operation of private schools and without subjecting private schools to costly administrative burdens.

Finally, S. 528 will assist American families to educate their children at the schools of their choice without significant fiscal impact. Our revenue estimates indicate that the cost of this tuition tax credit program will be $245 million in fiscal year in 1984; $526 million in fiscal year 1985; $753 million in fiscal year 1986; and $779 million in fiscal year 1987.

S. 528 is a bill that provides substantive tax relief to the families of nonpublic school students, thereby broadening and enriching educational opportunities and promoting excellence in our schools. The bill recognizes the value of our private schools and will strengthen the right of parents to decide how and where to educate their children. The Administration strongly supports S. 528.

This concludes my prepared testimony. I would be happy to answer any questions you may have at this time.

The CHAIRMAN. Are there any questions before the Secretary speaks?

Senator CHAFEE. Yes. I have a couple of questions, Mr. Chairman.

Mr. Chairman, I apologize for being late—I was testifying over in the House—but I have a statement I would like for the record.

Mr. Chapoton, is there a surplus forecast for the Nation for 1984?

Mr. CHAPOTON. No, Senator Chafee, there is a deficit forecast.

Senator CHAFEE. Could you give us those figures, roughly?

Mr. CHAPOTON. The deficit under the President's budget is—I don't have the exact figures—about $190 billion.

Senator CHAFEE. $190 billion?

Mr. CHAPOTON. Yes, sir.

Senator CHAFEE. And is the debt ceiling going to be increased soon?

Mr. CHAPOTON. There will need to be a request for an increase in the debt ceiling soon, yes, sir.

Senator CHAFEE. But the budget will be balanced in 1984, will it?

Mr. CHAPOTON. No, sir. Under our projections it would not be balanced. It would be a declining deficit through 1988, but it would not be balanced through the projection period through 1988.

Senator CHAFEE. Well, this is a spending program? How much? Could you just repeat?

Mr. CHAPOTON. This is a tax relief program, Senator Chafee, as my statement points out, and it has a revenue impact going up to somewhat under $800 million a year.

Senator CHAFEE. $800 million. I see. These are what we call tax expenditures?

Mr. CHAPOTON. It will show up on the tax expenditure list; that's correct.

Senator CHAFEE. And your position has been pretty consistently in favor of tax expenditures?

Mr. CHAPOTON. Senator Chafee, no. Our position has been opposing most tax expenditures, most items that come up—new legislation that would involve tax expenditures. I think it's dangerous, as I've said many times before this committee, to have a reaction that everything that appears on the tax expenditure list is bad, or indeed that you should oppose everything that appears on the tax expenditure list, and we have not done that. We have expressed concern about some of them and have supported others.

Senator CHAFEE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. I think I'll put Senator Chafee down as "undecided."

[Laughter.]

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. No questions, Mr. Chairman.

The CHAIRMAN. Senator Boren?

Senator BOREN. I have just thought on what Senator Chafee said, and I gather we are paying for it out of the deficit; is that the long and short of it?

Mr. CHAPOTON. Well, if you give tax relief, Senator Boren, it does reduce tax receipts; there is no getting around that fact. The bill has been carefully crafted to try to give the tax relief where it is most needed and to keep the revenue impact of it as low as possible.

Senator BOREN. So you are not proposing cutting some expenditure in some other area?

Mr. CHAPOTON. No.

Senator BOREN. So it will just have to be added to the deficit, then, as the net effect.

Mr. CHAPOTON. The impact will be felt in the deficit, no doubt about it.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Have we ever had any form of tuition tax credits in this country for private educational institutions?

Mr. CHAPOTON. Not at the Federal level; no, sir.

Senator PRYOR. Could you give us a reason why this country has not engaged in that practice in the past?

Mr. CHAPOTON. Well, I think the reason would depend on your analysis of the history of this Nation. The question of tuition tax credits has been discussed over the years, as you know, Senator. The argument is made—I think the argument that we have already seen here this morning really set forth the issue—of whether or not it strengthens or hurts the public education system.

Our position, our belief, is that it will strengthen the public education system. The diversity of choice will have that impact. And I think that is the concern. It is a legitimate concern, but one must deal with that question. We think it will strengthen not weaken the public education system.

Senator PRYOR. That's all I have.

Senator CHAFEE. Mr. Chairman, I had one other question, if I might.

Mr. Chapoton, you said that you are proposing certain restraints on the school which will receive this, or that the parents send their children to. In other words, the schools must do what? Must indicate that they are nondiscriminatory?

Mr. CHAPOTON. That is correct. The bill is designed to make it clear that the credits will not be available for tuition paid to a school which follows a racially discriminatory policy.

Senator CHAFEE. So, therefore, you are levying that requirement upon the schools?

Mr. CHAPOTON. That is correct.

Senator CHAFEE. Now, do you have a requirement that the schools must educate all the handicapped?

Mr. CHAPOTON. There is nothing in the bill dealing with the handicapped.

Senator CHAFEE. Why?

Mr. CHAPOTON. Well, this was discussed before this Committee last year, Senator Chafee. It was difficult then to determine how one would articulate that in legislation such as this.

Senator CHAFEE. But we articulate it for the public schools. We have managed to do that.

Mr. CHAPOTON. There is a law now requiring education to be offered without discrimination by reason of handicap in the public schools. There are expenses, of course, in meeting those requirements. In preparing this legislation we reviewed that situation again, and we thought that the tuition tax credit mechanism was not an appropriate place to enforce those rules.

Senator **Chafee**. But you have seen fit to make the requirement that they nondiscriminate.

Mr. **Chapoton**. That's correct. But that is the law now. That question received a lot of attention, as you well know, last year. We were trying to make it clear that there would not be a benefit to a school that followed a racially discriminatory policy, and so we put it in several ways in this bill to make that clear. That was a point of controversy last year, of course, and we want to remove that point of controversy from this legislation.

Senator **Chafee**. But you don't want to remove the point of controversy as far as the handicapped?

Mr. **Chapoton**. I think, honestly, Senator Chafee, that point of controversy hasn't arisen. There has not been the charge that these credits would be used to avoid the law that now prohibits discrimination against the handicapped.

Senator **Chafee**. Well, there's no harm putting it in, then.

The **Chairman**. Well, let me say that it may be put in. It was in the bill that I introduced last year, that you could not discriminate in an admission policy, but neither would you require schools to provide all of the extra facilities if there were extraordinary costs involved.

Mr. **Chapoton**. I think that's right. I think we would have no problem with that, Mr. Chairman. There is the problem, when you state that policy, of how you implement that policy.

Senator **Chafee**. Thank you, Mr. Chairman.

Senator **Boren**. Mr. Chairman, could I just ask one technical follow-up question?

I understand the administration estimates the proposed tuition tax credits would cost $1.5 billion over the three years; I think you said $800 million when fully implemented in the third year.

Mr. **Chapoton**. That's $779 million when fully implemented.

Senator **Boren**. All right.

These estimates appear somewhat low to me. I wonder, how did you arrive at that mathematical computation? What assumptions did you reach? What mathematical procedure did you go through to reach those estimates?

Mr. **Chapoton**. You estimate the number of students now in private schools, and the eligible enrollment in private schools in the future years. I don't have the enrollment figures with me—Secretary Bell might. But we can provide those, certainly.

Senator **Boren**. You estimated that the parent of every student now in a private school would take advantage of the credit?

Mr. **Chapoton**. Every student whose parents' income is within the eligible limits; yes, sir.

Senator **Boren**. Yes. And then I suppose you would make some assumption that, with this being provided, there would be a growth of members going into private education in the future?

Mr. **Chapoton**. There would be some growth; yes, sir. I don't have those figures with me.

Senator **Boren**. But you are not sure what projection of the growth?

Mr. CHAPOTON. No, but we have that available. I don't have it with me.

The CHAIRMAN. You might submit that for the record, then.

Mr. CHAPOTON. All right. We will submit that for the record.

[The information requested by Senator Boren follows:]

ENROLLMENT IN PRIVATE SCHOOLS, GRADES 1-12

[In thousands]

	1981 [1] (actual)	1983	1984	1985	1986	1987	1988
Current law	4,155	4,155	4,155	4,155	4,155	4,155	4,155
Induced enrollment			115	345	460	460	460
Total enrollment under proposal	4,155	4,155	4,270	4,500	4,615	4,615	4,615

[1] As reported in the Current Population Survey.

The CHAIRMAN. Senator Durenberger?

Senator DURENBERGER. I have a technical question relating to Senator Chafee's concern about the deficit and his desire to raise taxes.

Is there any current administration——

Senator CHAFEE. Wait a minute. Let's get this straight. "Desire to raise taxes"—that didn't come up in this conversation.

Senator DURENBERGER. All right. We will forgo the latter part.

Senator CHAFEE. Yes, I think that would be helpful.

Senator DURENBERGER. Is there any administration proposal to eliminate the tax deduction for real estate taxes paid in this country?

Mr. CHAPOTON. No, sir.

Senator DURENBERGER. Is there any administration proposal to eliminate the deduction for income and sales taxes in this country?

Mr. CHAPOTON. No, sir.

Senator DURENBERGER. Is there any administration proposal to eliminate the interest deduction for interest paid on State and local general-obligation bond financing?

Mr. CHAPOTON. The interest exclusion? No, sir. We have made no such proposal. We did have a proposal last year, as you know, dealing with private-purpose tax-exempt bonds. That was acted on by this committee. We have not made any further proposals.

Senator DURENBERGER. We have a report from CRS that indicates that the total revenue forgone by the Federal Government in that proportion of real estate taxes and the other taxes and interest that I mentioned that goes into public education in this country is $13.7 billion. Would you argue with that figure?

Mr. CHAPOTON. No, I wouldn't argue with that figure. I would think it would be at least that high, Senator Durenberger. And when you translate that in the public school system on a per-student basis, the estimate is that the Federal tax benefit through the deduction is over $300—slightly over, about $310—per student.

Senator DURENBERGER. Thank you.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. No further questions.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. I didn't hear your testimony, but I think the questions that I wanted to ask, even if you addressed them, I could still raise the questions.

Number one, is the $300 cap considered by the administration the ultimate that they are going to? Because originally legislation started out with $500, a year or so ago. So my question is: Is the administration then committed to standing with the $300 and not going above that? My position would be that we should stay at the $300 and not somewhere along the legislative process compromise that up.

Mr. CHAPOTON. I think we would have no thought of compromising it up in this legislative process. You are perfectly correct that we did propose $500 at first. The revenue impact was a consideration. We think the principle is important, and the revenue constraint was one that we had to deal with.

Senator GRASSLEY. The other point that I dwelled on a year ago when the legislation was up dealt with the cap on the complete phaseout of the use of the credit by income groups. And I think the administration's original position a year or so ago was $75,000. That was amended down in committee on an amendment that I got adopted to phase out completely by a $50,000 income, and then the administration bill now is at $60,000.

Mr. CHAPOTON. You are correct. The bill reported last year started the phaseout at $40,000, was completely phased out at $50,000. But the bill before you now starts the phaseout at $40,000, as your amendment did last year, but it has a slower phaseout and phases out completely at $60,000.

Our thought there, Senator Grassley, was, you are trying to pick a number above which the tax relief is no longer needed.

When you are talking about two-earner families, and a lot of the families we are talking about will fall in that category, $60,000—if you are talking about each parent making $25,000, you are at the $50,000 already—we did not think that was an income level above which this would not be a strain on such parents.

Senator GRASSLEY. OK. Well, I feel as strongly about that as I did a year ago, and I would proceed in the markup with an amendment similar to that.

But let me repeat for you from a year ago my rationale for it, because I suppose that $50,000 is as arbitrary as $60,000; but it was a follow-on of a debate that we used during the 1981 tax bill, and then we even used it during the debate of the 1982 tax discussions. And I assume, from what I read, it is still being used. And that is basically what we have in this committee and in the rhetoric of politicians in Washington generally, speaking of $20-$50,000 income class people as being middle-income people.

I guess I have a personal feeling that this ought to be for low- and middle-income people to make use of. And since we have established that in our rhetoric at $50,000, I think we ought to have that as the cutoff so that we can follow the same rules of debate on legislation, that that's what we are trying to affect. And my amendment would do that. It would cut it out at $50,000, and I intend to proceed with that amendment.

Mr. CHAPOTON. It is a judgment decision, as you point out.

Senator GRASSLEY. Mr. Chairman, I am done.

The **Chairman**. Senator Long.

Senator **Long**. No questions, thank you, Mr. Chairman.

The **Chairman**. Thank you very much, Mr. Secretary. We are pleased to have you, and we will be calling you again when we get into some of the nitty-gritty issues.

Mr. **Chapoton**. Thank you, Mr. Chairman.

The **Chairman**. I would now like to ask the Secretary of Education, the Honorable Terrel Bell, to come forward, and Dr. Jones and others who may be with the Secretary.

We are pleased to have you before the committee again. You may proceed in any way you wish, Dr. Bell. Your statement will be made a part of the record. We hope you might be able to summarize and give us any insights that may not be in the statement.

Secretary **Bell**. Yes.

STATEMENT OF HON. TERREL H. BELL, SECRETARY OF EDUCATION, DEPARTMENT OF EDUCATION, WASHINGTON, D.C.

Secretary **Bell**. Out of respect for the time of this very busy committee I would like to submit my full statement for the record and just give you a few highlights and then be ready for questions, Mr. Chairman.

I am pleased to have with me the Undersecretary, Dr. Gary Jones, and the Deputy Undersecretary for Planning and Budget, Gary Bauer.

I would like to present to you, and would hope that it could be part of the record, a letter from President Reagan expressing his very strong support for this legislation, outlining the reasons for it. Knowing how pressed you are for time, I'll not take time to read the President's letter, but we would like to transmit it to you, Mr. Chairman, and submit it for the record.

The **Chairman**. Right. I think it might be helpful, and we have that much time, I think, if you would read it. I wasn't aware that the letter was coming.

Secretary **Bell**. It is not very long, Mr. Chairman.

The **Chairman**. In my view, it answers a question raised by Senator Packwood, and that's the commitment of the administration. I think this would indicate what the commitment is.

Secretary **Bell**. Right. Yes, sir. I didn't know how many witnesses you have coming up and how abbreviated you wanted us to be.

This letter is dated April 28:

"**Dear Bob**: I want to thank you and the members of your committee for moving expeditiously on my proposal to enact tuition tax credits. As you know, I am deeply committed to this measure to strengthen parental control over education and to extend choice to those who would otherwise bear a heavy burden of dual payments for education.

"I am encouraged that your committee is giving this legislation the full attention it merits.

"Recently I received the report of the National Commission on Excellence in Education from Secretary Bell. This report outlines steps which must be taken to restore quality throughout our education system and places a heavy emphasis upon the role that parents must play in renewing our country's educational standards.

"After reviewing the findings of the Commission with great interest, I am more convinced than ever that passage of tuition tax credit legislation is needed now. It will enhance the measures the Commission recommends for excellence in both our public and private schools.

"I have remarked elsewhere that without a race there can be no champion. Without competition to excel in our educational system, we will not have excellence. Making alternatives affordable to those parents who want them by allowing them to keep some of what they now earn to spend on their children's education will provide competition as public and private schools seek to improve the quality of education they offer to attract and retain students.

"We will not provide tuition tax credits at the expense of public education. The reduction in revenues to the Treasury will not be offset by reducing Federal support for other educational programs of benefit to public and private school children.

"Our Constitution recognizes the parental right to choose between public and private education.

"Your consideration of this legislation and its passage by your colleagues on the floor of the Senate will help make this right a reality for more American families.

"We must improve the quality of education in both our public and private schools, and the Commission's report suggests that much of the reform must come from State Governors, legislators, school boards, principals, superintendents, educators, and parents.

"Parental involvement in a child's education is best assured when families choose the schools they wish their children to attend. This measure can be especially beneficial to minority students and those from low-income families.

"My administration was pleased to work with the Senate Finance Committee last year to insure that parents who send their children to schools which practice discrimination will not benefit from tuition tax credits. The language of the legislation which I sent to the Congress this year and which you are considering today is identical to that approved by your committee in the last session of the Congress.

"I do not want to repeat the persuasive arguments in support of tuition tax credits which will be presented by Secretary Bell and other members of the administration before the committee today, but let me assure you I have the strongest personal interest in this legislation and support your efforts to secure its passage.

"I look forward to working with your committee for its enactment.

"Sincerely,

RONALD REAGAN."

Thank you for the privilege of reading that, Mr. Chairman. I deeply wanted to read it. I sensed a sense of haste here.

[The letter for the record follows:]

The White House,
Washington, D.C., April 28, 1983.

Hon. Robert Dole,
U.S. Senate,
Washington, D.C.

Dear Bob: I want to thank you and the members of your Committee for moving expeditiously on my proposal to enact tuition tax credits. As you know, I am deeply committed to this measure to strengthen parental control over education and extend choice to those who would otherwise bear a heavy burden of dual payments for education. I am encouraged that your Committee is giving this legislation the full attention it merits.

Recently I received the report of the National Commission on Excellence in Education from Secretary Bell. This report outlines steps which must be taken to restore quality throughout our educational system, and places a heavy emphasis on the role that parents must play in renewing our country's educational standards.

After reviewing the findings of the Commission with great interest, I am more convinced than ever that passage of tuition tax credit legislation is needed now. It will enhance the measures the Commission recommends for excellence in both our public and private schools.

I have remarked elsewhere that without a race there can be no champion; without competition to excel in our educational system we will not have excellence. Making alternatives affordable to those parents who want them, by allowing them to keep some of what they now earn to spend on their children's education, will provide competition as public and private schools seek to improve the quality of education they offer to attract and retain students.

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We must improve the quality of education in both our public and private schools, and the Commission's report suggests that much of the reform must come from state governors, legislators, school board members, principals, superintendents, educators—and parents. Parental involvement in a child's education is best assured when families choose the schools they wish their children to attend.

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I do not want to repeat the persuasive arguments in support of tuition tax credits which will be presented by Secretary Bell and other members of the Administration before the Committee today. But let me assure you, I have the strongest personal interest in this legislation and support your efforts to secure its passage. I look forward to working with your Committee for its early enactment.

Sincerely,

Ronald Reagan.

The Chairman. We are not in that big a hurry. I think there should be a clear indication that the President strongly supports this legislation, that it is, frankly, a promise that he made in the last campaign that he hasn't given up on.

I can recall promises that former President Carter made about the creation of the Department of Education. He didn't give up on those, and I know that the President is sincere in what he hopes to do. It is a very controversial issue, but we are going to try to accommodate the President's concerns.

Secretary Bell. Now, if I may, just a few comments, and I will try to be brief.

I give these views to you, Mr. Chairman and committee members, drawn upon over, considerably over, 30 years of experience that I have had working in education and working most of that time in the public schools of this country.

I would emphasize to you that the strength of American education, in my opinion, is found in its diversity. It is found in the grassroots arrangements that we have for education, our emphasis on both public and private schools and colleges and universities.

I would emphasize that the private schools do an enormous amount of public good in this country.

Another point I would like to make is that most other Western countries offer some kind of encouragement or incentive or help to assure that their private schools are strong and that they are healthy, and this measure, as has already been indicated, will offer the kind of tax relief that will make it possible for parents to continue to support private schools, those who choose and prefer to send their children to private schools.

So I just stress that we need the strength and the diversity and the opportunity for learning in this country. The Commission on Excellence Report that was released this week and the reference made to it by the President emphasizes that.

I would like to move from that to a quick comparison, if I may, of the choice and the diversity that we have in higher education and the help that we give parents there in this country, and contrast it with what we do in elementary and secondary schools.

We do help, as the members of this committee well know, parents who want to send their children to, and students who elect to attend, private as well as public colleges and universities. And about 25 percent of our enrollment on the higher education level is private, and 75 percent is public.

We don't worry about the assistance that we give them in paying their tuition on that level. Contrast that to the elementary and secondary schools.

I would emphasize that one of the great traditions in this country is to provide both access to education and choice, so parents have some freedom to choose. We support that choice element as well as access.

Now, on the elementary and secondary education level parents receive no recognition or assistance, and the percent of enrollment there is 10 percent private and 90 percent public.

The access is there, but the choice is difficult and to some extent puts pressure on the financial capacity of the middle and lower income students, and also on minorities, to have this opportunity.

Just a quick comment about the big question: Will this hurt the public schools? I would like to emphasize to you that I see no evidence that it will. Our experience in Minnesota indicates that there was not a change in enrollment or a dimunition in the levels of support in that State where they have had an experience with tuition tax credits.

Other nations, where they are offering this or similar opportunities to give this kind of relief, we don't see a weakened and diminished public school system.

Now, I would like to just emphasize my own experience as a parent and as a public school administrator—I would like to personalize this just a little bit, if the committee will excuse me.

I have four children. They have all gone through the public schools. I prefer the public schools for my children. I have a son now who is attending a public school in Arlington. I couldn't be more pleased with the service that I have received from the public schools. They are my choice.

At the same time, I would emphasize that parents ought to have that choice. And if a parent is unhappy with the school which a child is attending, I want to testify to you that that's a difficult situation. If a parent is frustrated with the school, totally convinced that the school is inadequate, whether the school is inadequate or not the fact that the parent doesn't have a choice is difficult for them.

So those who want a choice feel that they need that option, for whatever reason they might have, I think that in our country we ought to offer that. If parents are not in support of the school which their children are attending, I can tell you that the children aren't going to do as well as they will if the parents feel good about the school they attend. That's how important I think it is that there be choice in this regard as well as access.

What we ought to be concerned about isn't whose schools the children attend, but that learning opportunities are there. And we ought to make sure that we provide that, because learning is what is important and what we ought to be worrying about today.

And learning requires, especially on the elementary and secondary school level, strong parental ties to the school.

I don't believe that this bill is costly. You have heard about the dollar cost on tax revenue. I don't believe that it is costly. Many of my public school colleagues criticize me and argue that it is going to be costly in the diminution of the capability of the public schools. If I believed that I certainly wouldn't be emphasizing this.

I don't think it is going to cost us in public school strength; indeed, I feel the public schools have been and will continue to be competitive. So I think it will do the opposite in providing that.

Now, there are many other details in my testimony. I won't go into it. My colleagues and I would be pleased to respond to questions, Mr. Chairman.

[The prepared statement of Secretary Bell follows:]

TESTIMONY OF HONORABLE T. H. BELL, SECRETARY OF THE DEPARTMENT OF EDUCATION BEFORE THE SENATE COMMITTEE ON FINANCE

April 28, 1983

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I want to thank you for giving me the opportunity to appear before you this morning to present the views of the Department of Education on S. 528, "The Educational Opportunity and Equity Act of 1983," the bill the President transmitted to Congress on February 16 of this year.

When I appeared before your Committee on Finance last July to support the Reagan Administration's tuition tax credit proposal, I stated my conviction that tuition tax credits would enhance the educational opportunities of lower- and middle-income working families and through competition improve all American elementary and secondary education. Today I want to reiterate that conviction and emphasize that tuition tax credits will increase the ability of American families to choose the best possible education for their children as they see fit.

S. 528 or the President's proposal would permit individual taxpayers to receive a credit against their income taxes of up to 50 percent of the cost of tuition and fees for each child in eligible private elementary and secondary schools up to a maximum credit per child. The maximum credit would be phased in over a three-year period, rising from $100 in 1983 to $200 in 1984, and $300 thereafter.

This legislation is not aimed at benefiting the well-to-do who can already choose the best school for their children and who need no assistance in meeting their educational expenses. It is intended to meet the needs of lower- and middle-income working families for whom choices are more limited. A full credit would be available only to those families with adjusted gross incomes up to $40,000, and benefits would decline to zero at $60,000 income.

S. 528, the Administration's tuition tax credit bill, also contains the strong anti-discrimination provisions that were adopted and reported out last year by the Senate Finance Committee. Tax credits would not be allowed for payments to private schools with racially discriminatory policies or practices. Parents would be eligible for the credit only if they send their children to not-for-profit tax-exempt schools that state their nondiscriminatory policy in their published bylaws, admission materials, and advertising. An eligible school must also annually file a statement that it has not followed a racially discriminatory policy with the Treasury Department. Parents will also be disallowed credits for payments to any school found to be following a racially discriminatory policy in an action brought by the Attorney General under the bill's declaratory judgment provision. In addition, although this bill has a general effective date of August 1, 1983, no credits will be allowed until a final decision of the U.S. Supreme Court or an act of Congress prohibits the granting of tax exemption under the Internal Revenue Code to private educational institutions that maintain a racially discriminatory policy or practice against students.

Our proposed legislation is also sensitive to the need to avoid the possibility--or even the appearance--of Federal interference with the independence of private schools so long as they do not discriminate on the basis of race. Tuition tax credits are not Federal financial assistance with strings attached. No Federal funds will pass from Federal officials to schools or even to students; no choices will be made at the Federal level concerning the content or program of the schools; and all decisions regarding education for which tax credits are granted under this proposal will be made by the families and schools directly involved.

What this proposed legislation will do is increase the ability of American families to choose the best possible education for their children. Growing numbers of American families, especially lower income families, want greater choice in education. This legislation would also foster the diversity of our elementary and secondary education system. That diversity, which encourages experimentation and improvement, is one of its strengths. It leads to improved education for all students.

The possible benefits that minority children would gain from tuition tax credits should also be stressed. Many minority children already attend private schools. Considering just blacks, the Bureau of Census reports that in the central cities of metropolitan areas in 1979, 12 percent of private school enrollees were black. The Census Bureau also reports that Hispanic students contributed over 8 percent of the private school enrollment in these central city areas that year.

The proportion of minority students is even greater in certain private schools. A recent survey, for instance, showed that 20.4 percent of the students in the Catholic school system--which represents over 60 percent of the nation's private school enrollment--were minority group members. The U.S. Census Bureau reports that this is the same proportion of minorities it found in the population at large in the 1980 Population Census.

This legislation will assist those families who have already chosen private schools for their children to continue to do so. The cost of education, both public and private, has risen dramatically in recent years. The cost of private schools, in addition to the State and local taxes paid to support public schools, has always limited the ability of lower-income families to choose them. Rising costs are now putting private schools beyond the means, without substantial sacrifice, of a growing number of middle-income Americans as well.

By providing tax relief in the form of tuition tax credits, this legislation will promote tax equity by reducing the double burden of private school tuition and State and local taxes for public schools that many parents now bear. In reducing the unfairness of this double burden, it will also allow many of these families to continue to exercise educational choice.

Americans have much to be proud of in their public and private educational system by virtue of its quality and diversity. Tuition tax credits will foster that diversity and encourage its quality. Diversity stimulates a healthy competition between public and private schools and promotes higher standards in both sectors. If a school has little or no competition, it may lack the incentive to improve its educational quality.

This improvement in quality through competition is of special importance to low income and minority youth. Since these students face considerable barriers in their quest for upward mobility, the better education that competition will produce will be an important step in improving their prospects after they leave school.

As Secretary of Education, I am well aware of the quality education offered in many public schools today and of the efforts to improve that quality. It is difficult, however, for any one school system to meet all the needs of all students or to be consistent with the values of all parents. There will always be many parents whose educational values differ from those of the public school system. These views should be respected and their freedom to choose supported, especially when this choice might increase the achievement of their children.

It should also be remembered that private schools do more than offer alternative educational choices to students and their parents. Private schools also carry a significant part of the burden of providing elementary and secondary education in this country, often at the cost below that of public schools. If it became financially impossible for many of the families now sending their children to nonpublic schools to continue to do so, the resulting increase in public school attendance would place large and unwelcome new tax burdens on State and local taxpayers. If one-tenth of the private school population of nearly five million students shifted to public schools, the costs to the public school system could increase by over one and a quarter billion dollars, based on current per pupil expenditures in public schools.

In closing, let me restate my belief that the public schools--like the public universities--will benefit from the diversity and wholesome competition that tuition tax credits will provide. The more diversity and options we offer, the richer will be our learning opportunities for all children. For these and other reasons I have given, I urge you to support this proposal and enact it into law during this session of Congress.

I would be happy to answer any questions.

The **Chairman**. Senator Moynihan.

Senator **Moynihan**. Thank you, Mr. Chairman, and thank you, Mr. Secretary. It's always a pleasure to have you before the committee just because of your own personal qualities and also to know that you are still there.

[Laughter.]

Secretary **Bell**. Thank you.

Senator **Moynihan**. I have just a few very brief questions that I would like to ask, and I hope you will think of them as friendly questions from a sometime professor of education who has been involved for a quarter century with this subject.

My first point would be this: The President—and this is not in any sense meant to be critical, but the President says here on page 2, "Our Constitution recognizes the parental right to choose between public and private education." Where in the Constitution?

Secretary **Bell**. I think this relates to the freedom that we all ought to have to choose.

Senator **Moynihan**. Wait, wait, wait. "Ought to have"?

Secretary **Bell**. It relates to the matter of choice. It relates to the taxation to a benefit for which you don't have an opportunity to receive.

Senator **Moynihan**. Mr. Secretary, I don't want to make this difficult for you, but the word "education" does not appear in the Constitution. And is there anybody present who thinks otherwise?

[No response.]

Senator **Moynihan**. I only say this because we want to bring to these matters a certain rigor, don't we?

Secretary **Bell**. Of course.

Senator **Moynihan**. And I hate to have the President of the United States telling me the Constitution says something when the Constitution doesn't even mention it.

Secretary **Bell**. But you see, the opportunity to exercise your discretion and to choose is throughout all of the words that we have there, and I think that's the reference to which the President was making. I think he would acknowledge that the word "education" is not mentioned in the Constitution.

Senator **Moynihan**. Could I ask you, was this letter written in the White House?

Secretary **Bell**. It surely was. Yes, sir.

Senator **Moynihan**. All right.

[Laughter]

Senator **Moynihan**. Would you find the fellow who wrote it, send him a copy of the Constitution, and say, "Please read this. You obviously had a deficient secondary school education." [Laughter.]

If we are going to talk about education, the President of the United States should not be telling us something is in the Constitution that isn't anywhere remotely in the Constitution.

Secretary **Bell**. But you see, Senator, if you arrive at the conclusion that since the word "education" is not in the Constitution that that eradicates all other freedoms and the right to exercise that as it relates to other opportunities where we guarantee discretion, then that's another matter.

Senator **Moynihan**. He could have said our Constitution "infers" the right of parents to choose. Now, "infer" you could get away with; "recognizes" you can't.

Secretary **Bell**. Yes.

Senator **Moynihan**. Now, second, you were mentioning higher education, and I think it is appropriate to say, if you were to make a judgment, would it not be your judgment that the majority of the principal research-oriented universities in this country are in fact private universities? Are they not, if you took the top 25? A good half?

Secretary **Bell**. Yes; I think if we took the top 25 we could say that. We have an organization in this town called the American Association of Universities, they allege that they are the top 50. If we take them, I would say that it might be close to a 50-50 break. Surely they are represented in excess of their numbers there.

Senator **Moynihan**. I think that is an important point.

One last question—and, Mr. Chairman, may I take just another second? You published this report "A Nation at Risk," which includes all kinds of wonderful images about war, and what would happen if the KGB had its way, et cetera. It is certainly an alluring document, but in all truth I don't find private elementary and secondary education even to exist within the horizons of this report.

Secretary **Bell**. Oh, yes, that's mentioned in the report. I know, as busy as you are, you haven't had an opportunity to read it.

Senator **Moynihan**. Where is it? What does it say?

Secretary **Bell**. It mentions the importance of education and the importance of having a strength on the public and private level in education.

Senator **Moynihan**. It doesn't mention tuition tax credits.

Secretary **Bell**. Oh, of course it doesn't.

Senator **Moynihan**. "Of course it doesn't"?

Secretary **Bell**. It doesn't discuss the financing at all; that wasn't the charge of the Commission.

Senator **Moynihan**. Just curious. Thank you very much, sir.

The **Chairman**. Senator Boren?

Senator **Boren**. Mr. Secretary, you talked a moment ago about the importance of choice and access. Does the administration proposal extend to refundability of tuition tax credits? Does it provide for refundability?

Secretary **Bell**. No; it does not. One reason for that is, this relates to the very low-income students, and they are already receiving—the low-income private school students are eligible to participate under chapter I of the Elementary and Secondary Education Act—those that are below the poverty level. And it was our view that that met that——

Senator **Boren**. They are eligible for direct Federal Government tuition grants to private schools presently?

Secretary **Bell**. No. They are eligible to receive the benefits of those services, those compensatory services.

Senator **Boren**. Like school lunches and other special categorical grants?

Secretary **Bell**. No, I wouldn't emphasize school lunches there; I would emphasize instruction in reading and spelling and mathematics, and academic areas that are being offered there.

Senator **Boren**. In other words, they can get the same categorical assistance provided to low-income students, whether they are in the private or the public school at the present time.

Secretary **Bell**. That is correct.

Senator **Boren**. But it does not go to tuition itself?

Secretary **Bell**. That doesn't go to tuition itself, but it serves that same group of students.

Senator **Boren**. It serves the same group of students, but it does not meet the same financial purpose in terms of meeting tuition costs. Isn't that correct?

Secretary **Bell**. Yes. But, you see, upper-income private students are not eligible for those services, but low-income private students are.

Senator **Boren**. Well, certainly not. Certainly, I understand that, Mr. Secretary, but we are here talking about the ability to pay tuition, which goes over and above additional help in reading or other things that low-income students might be entitled to have.

Secretary **Bell**. I am aware of that, but the refundability has to do with those whose income is so low that they don't receive any income tax, and that's the category we are talking about.

Senator **Boren**. I understand that, and that would encompass 46 percent I am told, according to the 1980 census, of black families in this country, and 37 percent of Latino children. So in other words, the administration proposal which is founded upon choice excludes 46 percent of black families and 37 percent of Latino families, as far as tuition payments are concerned. Is that not correct? Tuition only I am talking about.

Secretary **Bell**. We would emphasize that there is considerable participation of minority students in the private schools in many areas. In fact, the number of black students enrolled in private schools is almost representative of the black population in this country, percentagewise.

Senator **Boren**. Well, I am aware that there is some participation, but in terms of the aid which would be given by this proposal, $1.5 billion. And we would assume that tax credits are generally utilized by this committee to affect behavior. If we want to give a person an incentive to do something, we enact a tax credit to encourage that. So, presumably, by enacting a tax credit here, we make attendance at a private school less burdensome for the person who receives that $100, $200, $300 of tuition help than it is now.

So in theory we would be encouraging them or making it easier for them to attend private school; but we are not making it easier for those families, therefore—would we not be?—in terms of the tuition effect that would not be able to receive it by refundability?

Have there been any demographic studies made by the administration in terms of the characteristics of students that can be expected to switch from public school to private school under this particular proposal? Are there any studies available on the demographic shift that would be expected, of those students that would be switching from public school to private school?

Secretary BELL. We are in the process of conducting such a study, and possibly the Under Secretary could respond to that question in a bit more detail, if he would, please.

Dr. JONES. There has been, Senator, for the past few months, a project on financing of elementary and secondary education, and part of that project has focused on private education and different incentives that parents could receive to send their children to private schools—not to have it misinterpreted that we think tax credits is Federal aid to private institutions.

That study is in the closing stages, and we should have information available in the not too distant future.

Senator BOREN. Will it demonstrate the type, demographically, of students that would be expected to be shifted from public to private schools under this proposal?

Dr. JONES. I haven't read the proposal. I presume that it will address questions like that and identify what may be preferences by parents as to which school they would send their children to.

Secretary BELL. If the history in Minnesota is any indication, it won't have much of an impact.

Senator BOREN. How long has that been?

Secretary BELL. They have had several years.

Senator BOREN. Two? Three?

Senator DURENBERGER. Three.

Senator BOREN. Three years? In the third year?

Secretary BELL. Yes.

The CHAIRMAN. Senator Durenberger?

Senator DURENBERGER. Thank you.

I think, we had testimony in response to that last year. I don't see them on this hearing agenda, but we did have testimony from the people who were involved in the Minnesota experience, last year, which would substantiate the Secretary's statement.

Mr. Secretary, is there a voucher proposal that the administration has put together, and is it up here somewhere in bill form?

Secretary BELL. Yes. I have testified on that in the House and will soon do so in the Senate. The voucher proposal would be an amendment to the Elementary and Secondary Education Act, and it would permit low-income children to receive a voucher if the local school board will grant it, for the student to take that voucher and use it to help to defray their cost of attendance at another school. It could be another public school or another private school. And this voucher, and the existence of it if we can get the legislation passed, would help to meet the refundability point that Senator Boren was raising.

Senator DURENBERGER. Well, is it a piece of authorizing legislation for the appropriation of Federal moneys?

Secretary BELL. Yes, it would be authorizing legislation in that it would permit the student to use the Federal financial assistance to exercise an option to utilize the amount of that assistance—it is about $521 a child—in another school setting if the parents and the school officials agree that that would be best for the child. It is not unlike what we have now for education for the handicapped. We do provide Federal financial assistance for handicapped children, to be under the individualized education plan that is put together, to attend a school other than a public school if, in the combined judgment of the parent and the school officials, that will be best for the educational experience for the child.

So what it does is offer that same opportunity for the Elementary and Secondary Education Act that is available in the Education for the Handicapped Act at the present time.

It does require the consent of both the school official and the parent, so in that respect it wouldn't be identical to this, where this is an entitlement. The other one is an entitlement only if the local school board grants it. But it will help to meet the refundability question.

Senator **Durenberger**. Are you familiar with the fact that some States in this country, including the State of Minnesota, are exploring vouchers at the State level as well, particularly aimed at the economically disadvantaged?

Secretary **Bell**. Yes, I am.

Senator **Durenberger**. That is a growing area of interest and a growing area of policy concern across this country and at the State level.

Secretary **Bell**. Yes. I applaud that and hope we could have more of that. I think it leads on to the choice that I have been emphasizing, that I think is so important, that we offer so broadly in higher education.

Senator **Durenberger**. Mr. Secretary, is there some special reason why the administration bill does not provide a tax credit for tuition paid to public schools? What is your general philosophy on that?

Secretary **Bell**. Yes. We feel that this is not an access problem, obviously. And we also feel at this particular time we likely couldn't afford that in the revenue loss picture.

Senator **Durenberger**. Well, which one of those is important? I guess, in light of all of our concern for the deficit I can understand the second part of that. I don't understand the first. You say it's not an access problem? What does that mean?

Secretary **Bell**. Oh, I don't think we have any problem of access to the public schools in this country. Regardless of where a child lives, there is a school district there, and they are offering free public education to the children.

Now, there are expenses attendant to that. In some places on the high school level activity fees and books and so on are charged for. I know, particularly in the State of Minnesota that there is some acknowledgment of that in their State tax structure.

Senator **Durenberger**. But, Mr. Secretary, you are making the argument for tuition tax credits on the premise of choice. Are you saying that there is a choice in the public system? Or are you just saying that every kid has a school that he can go to?

Secretary **Bell**. No, my point was that there is access at the present time. There is choice among public schools in some school systems, a considerable choice.

Senator **Durenberger**. Would it improve both the choice and the quality of public education in this country if there were tuition tax credits and there were tuition in the public system?

Secretary **Bell**. I am not sure that it would, since the expenditures, the costs, for attending public schools are very negligible. I can't see that it's as significant an issue as it is with respect to private school children.

The CHAIRMAN. Senator Long?

Senator LONG. I would not like to see legislation of this sort used as a pretext for the Federal Government to impose strings and controls on private schools that do not now exist, Mr. Secretary. I was very much dismayed, in trying to help with revenue-sharing legislation for local communities, at the extent at which we have been bogged down and impeded in that program by amendments that appear to be well-intentioned but that would put first one string and next another on what local communities would have to do to get those revenue sharing funds. From my point of view it is an outrage. I regard it as clearly their own money, and to make them contend with a bunch of Federal conditions imposed on them in order to get some of their own money back stirs great resentment in me. If I could, I would repeal every string that was put on it.

When we started out with revenue sharing, I only had one suggestion. I thought they ought to tell us afterwards what they did with the money. But I would be willing to settle for not even having that requirement, if I could get rid of all the other strings that have been put on the revenue-sharing legislation. It is not fair; it is not right that just to get their own money back they should have to comply with a bunch of conditions.

What kind of assurance can you offer me that on your proposal we won't have a whole bunch of strings that have been imposed out of Washington on these private schools?

Secretary BELL. Well, since it is a revenue matter it will be administered by Treasury. I know that they very much share our concern that we keep the red tape to a minimum. I don't anticipate that Treasury will be promulgating regulations that go beyond the scope of the statute.

Now, what amendments are going to be attached as this legislation gets through both Houses up here is another matter. And this is, of course, a matter of considerable concern not only to us but also to the private school community that want to remain free of much of that restriction and reporting and red tape difficulty.

Senator LONG. I hope that we will have your help and the help of everybody you can associate yourself with in trying to keep this program from being impaired with first one string and one condition, and next another, to say, "You don't get the credit unless the school does this," and "You don't get it unless you do something else." By the time we get through with all of that it is possible to so slow this down with red tape and strings and conditions before the people could get the tax credit that it just wouldn't be worth anything to them.

Secretary BELL. Senator, I share that concern, with the years that I have spent contending with that on the State and local level. I share that concern. I know it is shared by Treasury.

I don't think that we need to worry about the regulatory part of it. My worry has to do with the amendments that are going to be tacked on as the legislation moves its way.

Senator LONG. I'm concerned about the amendments, both those that will be offered before this proposal becomes law as well as those that can be offered after it becomes law.

Secretary BELL. By the bureaucracy, and I'm aware of that, and I'll do all I can on that side of it. And hopefully, if this committee can keep from having too many provisos tacked on here, we will have a bill we can be proud of, and American education will be the better for it.

Senator LONG. I don't have much difficulty supporting what you are here to advocate. What concerns me is all the unintended baggage that might find its way aboard this proposal before it is finally law, and also afterwards.

Secretary BELL. Right. I am sympathetic with that concern. I share it.

Senator LONG. Thank you, Mr. Secretary.

The CHAIRMAN. We might just have to put on an amendment that they can't complicate it by regulation, or something.

Senator LONG. But I'm worried about what might be added right up here.

The CHAIRMAN. I know.

Senator LONG. Let's start with what we do right here.

The CHAIRMAN. We may complicate it first.

Secretary BELL. I just emphasize that it's appalling the amount of law that is written in the executive branch by exercising regulatory authority and interpreting what you tell us to do. It is just amazing to me how much is added and how much embellishment there is. So I know where the Senator is coming from there, and I want to assure that I will do everything I can to see that that doesn't happen. I have had my own suffering with that.

Senator LONG. Thank you, Mr. Secretary.

The CHAIRMAN. Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Bell, in the President's letter there is a ringing phrase: "Without a race there can be no champion; without competition to excel in our educational system, we will not have excellence."

Could you cite, in the United States, where excellence has been brought about on the elementary and secondary level by competition between private and public schools?

I come from a section of the country that probably has the highest private school enrollment, percentagewise, of anywhere. Are the public schools in the Northeast superior to the public schools in the West?

Secretary BELL. Oh, if we were talking about today I would not say so.

Senator CHAFEE. Well, what do you have to substantiate the suggestion that competition in schools on the elementary and secondary level produces a better public school? What figures do you have?

Secretary BELL. I think the President was expressing his belief in the marketplace and how it gives us all an incentive. And I know that it is his feeling that——

Senator CHAFEE. Never mind his feeling. Do you not have any statistics whatsoever in your vast Department that would indicate that the education is improved where there is a high percentage of private schools?

Secretary BELL. I believe that we could provide evidence to you that where there is choice and freedom to choose there is a correlation between that and achievement. And I emphasize that because it is choice that we are talking about as—

Senator **Chafee**. Mr. Secretary, I have a limited time here.

Secretary **Bell**. Let me finish if I may, Senator. I haven't made my point yet.

In many public schools there is an open and freedom-to-choose policy of the board, and that's the point that is being made. And as you have asked for evidence, I think there is evidence there.

Senator **Chafee**. No, Mr. Secretary—what you are proposing is that money go into the private schools of the country. That's what it is. And you are saying that that will produce better public education. I am asking for some evidence.

Secretary **Bell**. And I was indicating to you that where we have had choice, and we haven't had much choice thus far in the private schools, but where we have had choice we think it has been beneficial from the point of view of——

Senator **Chafee**. Would you submit evidence, for the record, of board scores or whatever it is, taking different sections of the country where there is a high percentage of private enrollment to substantiate your point?

Secretary **Bell**. We can submit that where there is choice. I am not saying it is necessarily between public and private, but where there is choice as well as access among——

Senator **Chafee**. But this has nothing to do with choice in the public schools.

Secretary **Bell**. Of course it does, Senator. That's what we are after. And where we have competition for students and choice among public schools, the same thing would apply to private schools.

Senator **Chafee**. Well, I would look forward to that coming in for the record.

Senator **Chafee**. Now, from Senator Moynihan, he said in the discussion that there is support for the private tuitions in the universities, he said in the top 20 universities in the country, and the suggestion was as a result of this private assistance—the suggestion was that over half of them were private universities.

Senator **Moynihan**. Sir, I didn't say that.

Senator **Chafee**. Well, that was the implication of your question.

Senator **Moynihan**. No, no, no.

Senator **Chafee**. If it wasn't, then we will set it aside. We will take that up in the next round.

Senator **Moynihan**. Well, I want to say something on your behalf in awhile.

Senator **Chafee**. Well, on your time you can do it. [Laughter.]

The problem here, Mr. Secretary, is a whole series of requirements are levied on the public schools by your Department and by the Congress. Now, why shouldn't those same requirements be levied on the private schools? If they are beneficial for the public schools, why shouldn't they be levied on the private schools under your program? Why should they be treated differently?

Secretary **Bell**. First of all, the private schools' parents are receiving the tax credit, and it's quite a small one. As Senator Long was pointing out, we don't want the requirements to exceed the benefit. A $100 tuition tax credit the first year is not a very large one. I think we levy upon the public schools many more requirements than is justified by the small 8 percent that we put up versus 92 percent in the public schools—that's State and local money. I think it is a matter of putting so many requirements on there that it far exceeds the small for the first year $100 tax credit.

Senator CHAFEE. Well, Mr. Secretary, then isn't the answer for you to come forward with legislation to remove these excessive requirements that you believe are imposed on the public schools?

I presume you might come in and say they shouldn't handle the handicapped—maybe so; I don't know. Or they shouldn't have to educate in bilingual, shouldn't have to take immigrant children. I don't know what your proposals would be. And at the same time impose the remaining requirements on the private schools, since you deem that those are beneficial requirements, the remaining requirements. Are you prepared to do that?

Secretary BELL. Well, first of all I would say we have come forward with those proposals and they are now pending before the Congress, to eliminate many of these regulations and problems. There are many legislative proposals up here pending before you now, and we would urge you, if I could take this opportunity, to enact them. And then we would get the kind of relief in that regard that we are talking about. We are on the record in that regard. It relates to everything we are trying to do with block grants; it related to a number of regulatory reforms that we have wanted to make, and we have run into Congressional opposition in that regard.

Senator DURENBERGER. Senator Grassley.

Senator GRASSLEY. Dr. Bell, how do you respond to the criticism, usually a last-resort proposition put up by the opponents of this legislation, that, "Well, if we are going to have tuition tax credits, at the very least they should only go to children that are going to schools that are State-approved? In other words, the sort of proposition where the schools would have to be formally approved by a State organization or some governmental agency?

I am raising that as an obstacle people raise. So how would you answer that?

Secretary BELL. I would like to call on the Undersecretary to respond to that one.

Dr. JONES. Number one, Senator, there are several institutions in each State that don't believe that it is appropriate to be approved by the State. You do have State-supported schools now, and many people do wish to seek other types of institutions.

If you look at the 50 States, there are 9 States that have no State accreditation or approval or licensure regulations whatsoever. There are 23 that only require voluntary accreditation, approval, or licensure.

So on the one hand you have the State trying not only to invoke one school system on their constituents, through the public schools, but now those advocates against tuition tax credits would want to invoke the same type of State accreditation standards on private schools. And we find that there are many parents who wish to choose private schools so they aren't encumbered in their choice by the State regulations or licensure or accreditation standards.

Senator GRASSLEY. So then your answer is (1) that you wouldn't have a uniform system because some States don't even get involved with that aspect of regulation of private education, and (2) that we just shouldn't even be having that sort of condition put on it?

Dr. JONES. Not at the Federal level, sir, that's correct.

Senator GRASSLEY. Well, they were not suggesting it at the Federal level; they were suggesting State approval, but that tuition tax credits should not be available to anybody who did not go to at least a State-approved private school.

Dr. JONES. But if it is part of this legislation, Senator, it would be a Federal Government intrusion on State policy.

Secretary BELL. We would try to persuade the States not to do that either.

Senator GRASSLEY. Didn't we have an amendment, though, adopted before the bill got out of committee last year to that effect?

Dr. JONES. You had an amendment adopted on compulsory attendance, or language to that effect. A mix. Yes, sir. It does not appear in the administration's bill.

Senator GRASSLEY. No, it's not in the administration's bill, but it was put on this bill that came out of committee last year, right?

Dr. JONES. Yes, sir. We believe that the language in the bill last year could be interpreted that some State laws would require schools be State-approved or accredited before parents would receive the benefit of the tax credit, and we do not believe that is an appropriate role for this legislation.

Senator GRASSLEY. Well, then the administration opposed that amendment a year ago?

Dr. JONES. We opposed it a year ago in this very committeeroom, yes.

Senator GRASSLEY. All right.

Senator Boren brought up the proposition of slippage away from the public schools. Now, you referred to a study, and those studies are not completed yet? Or those studies are showing that there isn't slippage?

Dr. JONES. Well, we have referred to two studies here. One of them was the Minnesota case where there was actually a decrease in attendance at private schools after tuition tax credits was implemented in that State. There is another study that Senator Boren has referred to, which is a project undertaken by the Department, started some months ago and is reaching conclusion, but it does not address the question of slippage. I think they have done a survey that will address parental preferences.

Senator GRASSLEY. OK.

Well, my view would be that, whether or not there is slippage would be directly related to whether or not the tuition tax credit is looked at as an economic incentive for people to go to a private school, and I think with the $300 limit which I favor and would not want it to go higher, I think at that level it is a recognition of the dual cost of education for private school children; but yet it is not so high that there would be an economic incentive, because I for one would want the rationale for parents sending their children to a private school, for that to be the traditional and historical rationale, that the private schools can give their children something that the public schools can't, and to have that reason be used as opposed to an economic incentive that the tuition tax credit might give them for sending their children to a private school.

Dr. JONES. Senator, we addressed this bill as equity rather than incentive; so we concur on that.

The CHAIRMAN. Senator Moynihan, did you say you had a follow-up?

Senator MOYNIHAN. Yes, just two things.

On the question of competition, choice, and resulting educational outcomes, Senator Chafee asked a question. And I think he was probably responding at least in part to the President's statement in his letter:

> I have remarked elsewhere that without a race there can be no champion, without competition to excel in our educational system we will not have excellence.

Can I say to you I don't think there is 5 cents worth of data in this country that would demonstrate that anything approaching competition between school systems produces different outcomes. And if there is, I wish you would give it to us.

I am very serious about this. I don't much like this report, to tell you the truth. It is a statist report. It says we'd better have better schools so we can beat the Japanese—which is not why you have schools. "Excellence" defined as competence at machine tool building is not my idea of what educational excellence is really all about; and in any event I don't think you can solve the problem with that approach. [Applause.]

Senator MOYNIHAN. Thank you. [Laughter.]

But most people if they make choices among school systems do so because of where they choose to live, and to the degree they have that choice they very commonly choose to live where they think the school systems are best. The correlations, however, are very weak.

Now, if the National Institute of Education had been doing its work over the last 10 years—and I went to an awful lot of effort to get it established—you would have some such data. But I don't think you have any. If you say there is a correlation, I would like to see that correlation. I'll bet you it's very weak. I bet you it would not get through a National Science Foundation peer review. Do you have it?

Secretary BELL. I have some evidence from school systems that I know of where they have offered choice to the parents and where there has been increases in achievement gains.

Senator MOYNIHAN. What choice? The choice between one school and another?

Secretary BELL. Well, one I know of is a school system that I came from in Salt Lake City. Now, I want to emphasize, Senator——

Senator MOYNIHAN. By definition, a public school system.

Secretary BELL. That's right, but——

Senator MOYNIHAN. What was the choice offered?

Secretary BELL. Well, Senator, it's a choice among this school or this school or this school in the public schools. And that's what we are talking about, is the——

Senator MOYNIHAN. Can you give us a hard research paper?

Secretary BELL [continuing]. Is the principle of choice.

Senator **Moynihan**. Sir, can you give us a hard research paper?

Secretary **Bell**. It depends on the Senator's definition of a "hard research paper."

Senator **Moynihan**. It is a very "hard" definition, let me tell you. [Laughter.]

Secretary **Bell**. I don't know whether I would be able to provide one that would meet the Senator's standards or not. I would try to.

Senator **Moynihan**. May I just plead to you that the case for tuition tax credits, as for many other things, is a case of individual choice that does not have to be buttressed by false or unsubstantiated claims of outcomes. And I really do say that if you bring in these extraneous things you will be destroyed; there will not be a respectable professor in the subject in the country who would pay any attention to you. They would say, "Where is your data?" and you won't have any.

Now, there is data, some recent studies for minority students, showing that the nonpublic schools frequently have higher outcomes in certain kinds of cognitive tests. But can you collect it and bring it up here? And please don't be afraid to say "It turns out we don't have any."

Secretary **Bell**. Well, it's difficult, as you know better than anyone else here, Senator, it's difficult to extract other factors when you have research in education.

Now, as I point out some school systems where they have choice and at the same time the achievement has gone up, some other critic and scholar could say, "Well, how do you know, Secretary Bell, that that was the cause or some other factor at that time was the cause?" And I would say, "I don't know." I am aware of that, and it isn't the prime purpose, it isn't the prime tenet upon which we have been building our advocacy for tuition tax credits.

I would, if I may, Senator—and I know how pressed you are for time—I would like to defend this for just a moment. I know it's extraneous.

I appointed, Senator Moynihan, as conscientiously as I could a panel of educators and scholars, including one Nobel Laureate——

Senator **Moynihan**. Mr. Seymour.

Secretary **Bell**. Yes, and William O. Baker.

Senator **Moynihan**. Who has just become a faculty member at the Graduate School of Education at Berkeley.

Secretary **Bell**. Yes, sir. And Gerald Holton.

Senator **Moynihan**. One professor. That's the only professor; a first-rate one, to be sure. One teacher, and the rest are administrators.

Secretary **Bell**. Some distinguished school administrators. One of the outstanding school superintendents in this country is Dr. Sanchez from Albuquerque.

Senator **Moynihan**. Agreed.

Secretary **Bell**. We feel that this is an objective study. I feel, Senator, that it is unfair to these Commission members that responded to our request that they appraise the American education system, if I dare say it, for you to say that this is military oriented and focused upon the Japanese and it's related to production of things and not for education for its own sake. I would say to you Senator——

Senator MOYNIHAN. If I said that, I would like to withdraw that statement.

It's kind of hard to put together a panel of people who say we are having a huge economic crisis, and have the President say, "Right. They have said just what I mean. The Federal Government has no responsibility in this business."

Secretary BELL. But you see, Senator, that isn't what this study says. That isn't the thrust of this study. And Senator, for you to typify that after all that hard work, I would suggest that it is unfair to these fine, conscientious citizens, including some administrators, if you please, who are very intelligent people and who command a lot of respect.

Senator MOYNIHAN. Well, of course they command a lot of respect. I make the observation that there is one professor and one school teacher, and that in the whole section that deals with financing there is not a single reference to tuition tax credits.

Secretary BELL. Senator, that was not their charge. Their charge was to look at excellence in education and describe to us the problems that we are having in attaining excellence, and make some recommendations as to how we might be able to accomplish it. It was a bipartisan group. It was a panel of distinguished leaders.

Senator MOYNIHAN. It is a fine study, Mr. Secretary.

Will you provide this committee with the research evidence on the effects of choice in education with respect to outcomes?

Secretary BELL. I will provide what we have available.

Senator MOYNIHAN. All right. That's what I assume you mean. I will appreciate it.

The CHAIRMAN. Senator Long?

Senator LONG. I just want to ask about one other matter, Mr. Secretary, because I was not aware of it until I thought I heard you say it.

I believe I heard you say, with reference to one of the questions asked, that the black minority are represented up to their population percentage in the private schools. Is that correct, or not?

Secretary BELL. I wasn't sure I followed the thrust of your question, Senator Long. Would you repeat it, please?

Senator LONG. You said something about minorities being represented in the private school system. I thought I heard you say something to the effect that the minorities were well represented in the private school system.

Secretary BELL. They are, and maybe one of my colleagues could present some numbers to you in that regard.

Dr. JONES. Senator, I believe you will find the 1979 data indicated that there was close to 11 or 12 percent minority representation in private schools, and the 1980 data provided to the Department indicates nearly 20 percent of the enrollment in Catholic schools is minorities.

Senator LONG. I was not aware that there is that large a percentage of minorities in the private school system.

Dr. JONES. In the Catholic schools, sir.

Senator LONG. But you said 11 to 12 percent were minority students in the private schools generally.

Dr. JONES. Yes, sir, but that would also include Hispanics and other minority individuals.

Senator LONG. Perhaps you could provide me with some additional information on that subject. I think it is of interest in view of the fact that one of the witnesses has a statement here from the NAACP, apparently, that is expressing a very severe concern about the potential discriminating effect of this legislation.

I was not aware that there is that large a minority representation in the private schools, and I think it tends to support your case if that be so. So I would like to have more information on that if you have it. I would like to have it in greater detail.

Dr. JONES. It certainly approaches 10 percent for minority representation across the Nation. We will provide you with the data.

Senator LONG. Thank you very much.

The CHAIRMAN. Thank you very much.

Senator MOYNIHAN. Mr. Chairman, could I ask just one more question?

The CHAIRMAN. We have about 20 witnesses left.

Senator MOYNIHAN. I have a 1-minute question.

The CHAIRMAN. Yes, go ahead.

Senator MOYNIHAN. I just wanted to ask, because again it is a question of, it seems to me, certain kinds of things pressing in against each other. Mr. Edward Fisk, who is a respected education writer for the New York Times says that several members of the Commission who made this report said they were flabbergasted when President Reagan praised them for their "call for an end of Federal intrusion," and said that this was "consistent with our task of redefining the Federal role in education."

Did the President say that this calls for an end to Federal intrusion?

Secretary BELL. The President addressed the group of education leaders that met at the White House when we released the report, and the President in his address to them expressed a number of his views about education, among which was his hope that there would be a lessening in Federal intrusion.

Senator MOYNIHAN. Did he say that these people came to this conclusion?

Secretary BELL. He did not say that.

Senator MOYNIHAN. Mr. Fisk has got it wrong?

Secretary BELL. I haven't read Ted Fisk's article. I know Ted, and I respect him. He is a splendid reporter. So I don't want to allege here on the record that he got it wrong, because I don't know in the context that he said that. But I was there, and I know what the President said. He was expressing some of his own views about education. At the same time he expressed to the group that he hoped tuition tax credits would be passed. And of course this Commission didn't address themselves to that at all; it wasn't their charge.

Senator MOYNIHAN. Thank you.

The CHAIRMAN. Senator Boren?

Senator BOREN. Mr. Secretary, one of the few changes that the administration made in the bill passed by this committee last fall was to drop the protections for handicapped children, and I wondered why that change was made in resubmitting the proposal this year.

Secretary BELL. Would you respond to that, Dr. Jones?

The **Chairman**. I might respond to that. We may put that back in the bill.

Secretary **Bell**. Dr. Jones can defend our position on it.

Dr. **Jones**. Well, briefly, if I may, Mr. Chairman?

The **Chairman**. Go ahead.

Dr. **Jones**. Last year we advocated that it wasn't necessary for this provision, partially because the 94-142 Education of the Handicapped Act now provides some support for students attending private schools, to the tune of about $230 per student. Students who attend private schools, through the chapter I 89-313 provision can receive on the average $560 per student.

Furthermore, in addition to that support through those public law provisions, you will find that public schools do provide payment in full if they assign a handicapped child to a private school.

Third, you will find that many thousands of handicapped children are being educated in private schools.

And last, we simply don't believe that Internal Revenue Code 501(c)(3) applies to coverage of the handicapped. It's the only enforcement measure that we would have in this bill, and it does not apply to the handicapped.

Senator **Boren**. So the administration would oppose the inclusion of a provision on the handicapped?

Dr. **Jones**. The administration would prefer that there be no inclusion of a handicapped provision.

Senator **Boren**. Well, I understand that only 2.7 percent of the private schools provide the programs for the handicapped that are mandated under the Rehabilitation Act of 1973 and the education of all handicapped. Is that correct? And if that is so, how then can we be sure, and how are we having any kind of an equal competition, if we are not providing these mandates?

Dr. **Jones**. Well, the law requires that if the handicapped children attend private schools the dollars that flow to the public school are provided either in services or in kind to those students.

Senator **Boren**. Do you oppose also including a mandate that the private schools would have to meet the same requirements in terms of bilingual requirements and requirements for legal alien children that the public schools would have to meet?

Dr. **Jones**. We don't believe this is a bill that should impose upon institutions all types of regulations when you are dealing with 501(c)(3) of the Internal Revenue Code which addresses nondiscrimination.

Senator **Boren**. Well, if you leave the public school with all these mandates and requirements, and you do not put these mandates and requirements on the private schools, isn't it very likely—going back to my earlier statement about the demographic effect of who is going to end up in private schools and who is going to end up in public schools—that that is going to have an immense effect?

Dr. **Jones**. No, I don't believe so, sir. I think you will find that because of the passthrough of dollars from the local education agency to those students attending private schools, in services or in kind, you are going to find that kind of support, and attendance patterns will be quite normal, as they are now already, by demographic information that we have shared with the committee this year and last year, and you will find that there are many ways that the bilingual or limited-English proficient child can be taught without even getting Federal dollars from the bilingual education program.

Senator **Boren**. We are talking about public tax dollars, public tax dollars and public schools. We assure that they are used appropriately to meet equal opportunity standards, whether it be for the handicapped or for others that the public schools are constitutionally mandated to serve.

How do we assure that kind of public control, then, over these schools that will be receiving public moneys? One of the things that we have always believed in in this country is public accountability in the use of public funds. How do you propose that we do that without mandating the same kinds of policies and controls on private schools?

And I'm all against private schools having these mandates—unless they want to have public tax money. Then I think they must apply.

Dr. **Jones**. They are not getting public tax dollars, Senator.

Senator **Boren**. Where does this money go that the parent pays?

Dr. **Jones**. It stays in the pockets of the wage earners before it comes to the Federal Government.

Senator **Boren**. Oh. If they do not pay tuition to these private schools, they can pocket the money we are giving them, and the school doesn't get it? Is that correct?

Dr. **Jones**. The parents maintain the dollars in their own pockets.

Senator **Boren**. Oh, they don't pay it to the private school in tuition? Isn't that necessary that they pay the tuition as a qualification for getting the tuition tax credits?

Dr. **Jones**. But it is not aid to the institution, Senator. If you believe that the Government has first call on the wage earner's dollars before the wage earner does, then you can make that assessment. I don't happen to believe that.

Senator **Boren**. There is no passthrough here?

Dr. **Jones**. I don't happen to believe that.

Senator **Boren**. Are you trying to make me believe—now, surely you do not believe that any intelligent person can believe that there is no connection between the $300 tuition tax credit and $300 being eventually paid in tuition to the private schools. Are you telling me there is no relationship to that?

Dr. **Jones**. I am telling you the relationship of this bill to the question that you are raising is that we are providing a tax credit to parents and no tax credit to an institution.

Senator **Boren**. Without any requirement that parents convey that money to the institution. Is that correct? There is no requirement here in this bill? Where does it say that they will get a credit if they are not paying that money to the private school?

Mr. **Bauer**. You are missing the point, Senator. The point is that when you allow a parent to keep some of their tax money, that does not represent a grant from the Federal Government that then allows the Federal Government to——

Senator **Boren**. Oh, I think you are missing the point. If there is a direct requirement that the money be used by that person merely as a vehicle for passthrough, then there is a very direct connection, and I don't see how in the world you can sever that connection. That's nonsense.

Mr. BAUER. We do not believe this is Federal aid to private schools, Senator.

Senator BOREN. Well, I think that shows how shortsighted that this proposal is.

The CHAIRMAN. Let me suggest that there probably will be additional questions as we move on.

Senator CHAFEE. Well, Mr. Chairman, I didn't get my second round. I know you have a long list of witnesses, but we have the premier educator in the United States before us, and I think he is the principal proponent of this legislation. I had 5 minutes, and I would like to have a second round, if I might.

The CHAIRMAN. All right.

Senator CHAFEE. Mr. Bell, are you suggesting anywhere that there is a crisis in private education in the schools in the United States as far as financing goes?

Secretary BELL. From my own definition of a crisis I don't believe that I could say that, Senator.

Senator CHAFEE. Are you aware that the enrollment in the private schools now is greater than it was 10 years ago as a percentage of the total pool?

Secretary BELL. I believe that is accurate.

Senator CHAFEE. Now, the gentleman with you—Mr. Jones, is it?

Secretary BELL. Yes. He is our Undersecretary, Senator.

Senator CHAFEE. Mr. Jones, you said that enrollments declined in Minnesota after these tuition tax credits went through in Minnesota. Is that in numbers, or is that a percentage of the total pool?

Dr. JONES. That is a percentage of the students who were attending school. Of the total population the percentage of attendance declined.

Senator CHAFEE. I would appreciate it if you would submit that for the record.

Dr. JONES. I will, sir.

[The information follows:]

INTERIM REPORT

GOVERNOR'S
LEGISLATIVE COMMITTEE FOR
NONPUBLIC SCHOOLS

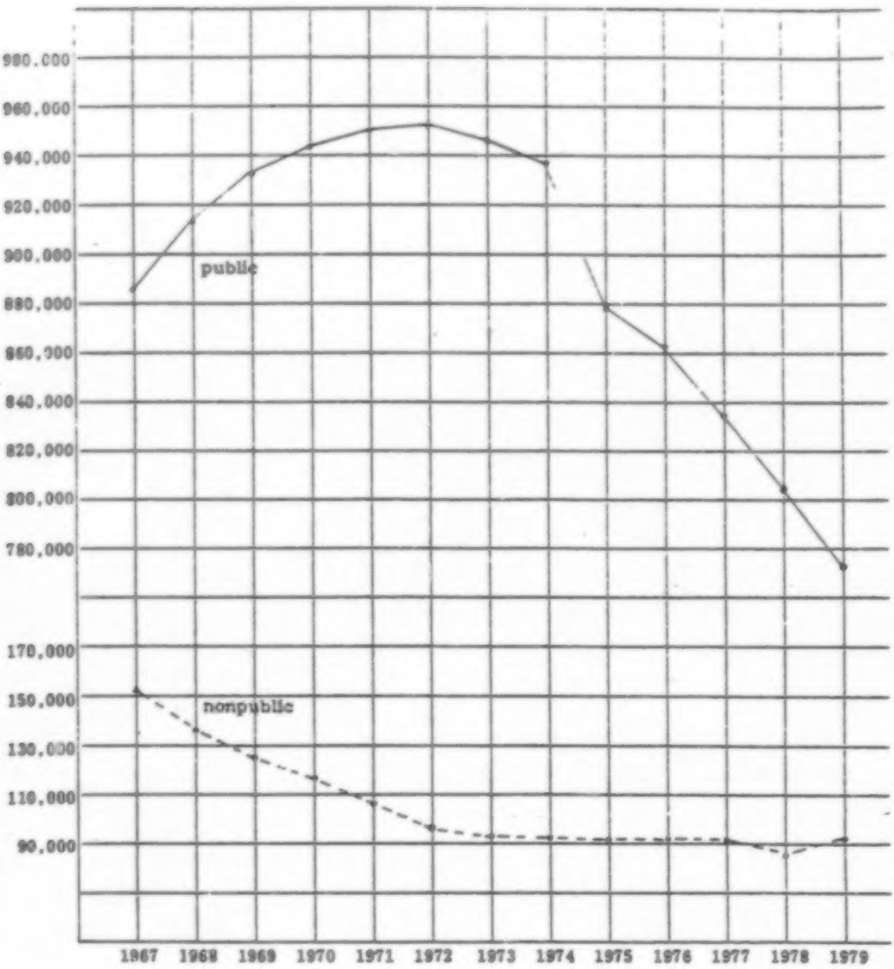
MARCH, 1981

STUDENT ENROLLMENT

TABLE 2

YEAR	PUBLIC	NONPUBLIC	TOTAL	NONPUBLIC % OF TOTAL
1967-68	886,171	150,596	1,036,767	14.5
1968-69	916,946	137,319	1,054,265	13.0
1969-70	934,032	124,934	1,058,966	11.8
1970-71	942,474	118,091	1,060,565	11.1
1971-72	949,600	106,392	1,055,992	10.1 T.C. [illegible]
1972-73	950,701	99,139	1,049,870	9.5
1973-74	944,555	94,023	1,038,578	9.1 Sup ct
1974-75	939,998	92,128	1,032,126	8.9
1975-76	879,944	91,893	971,837	9.5
1976-77	862,591	91,793	954,384	10.1
1977-78	835,672	90,919	926,591	9.8
1978-79	806,381	88,524	894,905	9.9
1979-80	773,906	90,954	864,860	10.5

STUDENT ENROLLMENTS GRAPH 2

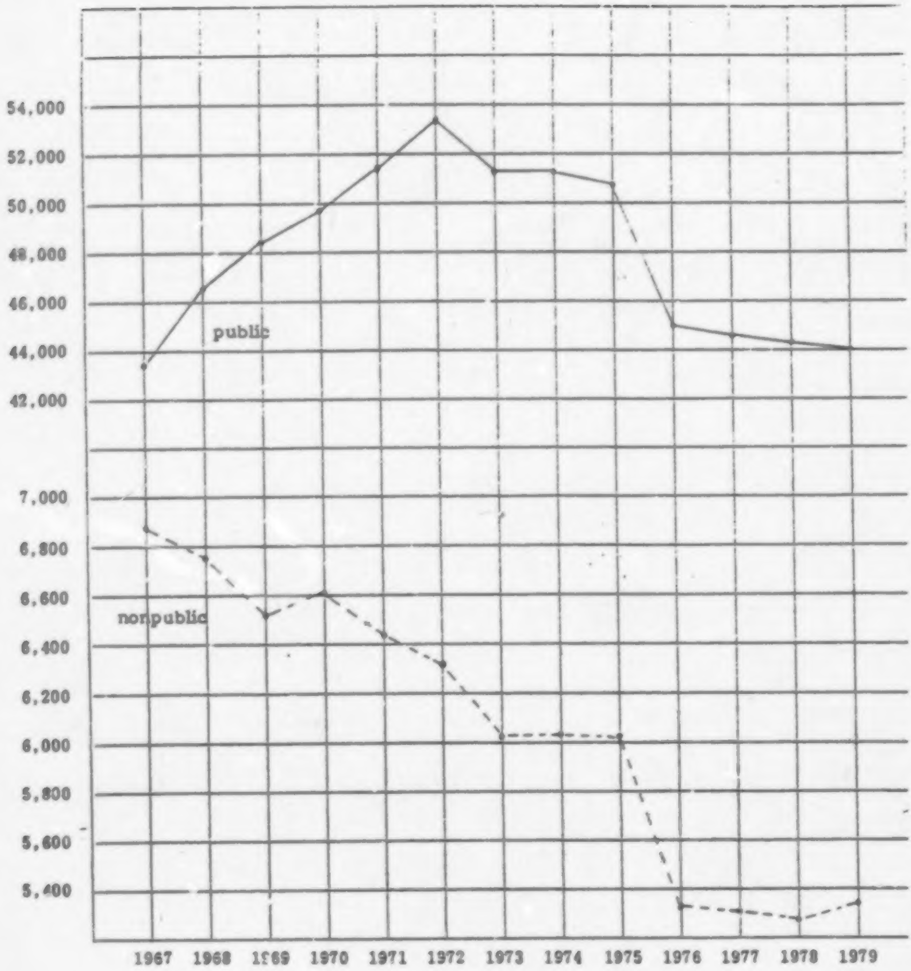


NUMBER OF TEACHERS

TABLE 3

YEAR	PUBLIC	NONPUBLIC	TOTAL	NONPUBLIC % OF TOTAL
1967-68	43,604	6,878	50,482	13.6
1968-69	46,291	6,759	53,050	12.8
1969-70	48,495	6,543	55,038	11.9
1970-71	48,911	6,628	55,539	11.9
1971-72	51,553	6,442	57,995	11.1
1972-73	52,643	6,261	58,904	10.6
1973-74	51,100	6,025	57,125	10.6
1974-75	51,176	6,094	57,270	10.7
1975-76	50,845	6,073	56,918	10.7
1976-77	44,974	5,363	50,337	11.0
1977-78	44,628	5,312	49,940	10.6
1978-79	44,281	5,283	49,564	10.7
1979-80	44,021	5,354	49,375	10.8

NUMBER OF TEACHERS GRAPH #3



TEACHER CERTIFICATION

In the public school sector, necessary qualifications for employment as either teacher or administrator include certification. Though the exact requirements have undergone revision and change over the years, the trend has been generally to include more formal educational training rather than less, and to add inservice and continuing education requirements for renewal of certificates. Life certification was discontinued several years ago. In addition, more detailed requirements have been established for teachers in almost every academic field as well as in many extra-curricular fields. Financial incentives in the various salary "tracks" have encouraged teachers to broaden their areas of training.

A portion of the Minnesota Statutes reads as follows:

> Section 120.10, Subd. 2: "A school, to satisfy the requirements of compulsory attendance, must be one in which all the common branches are taught in the English language, from textbooks written in the English language and taught by teachers whose qualifications are essentially equivalent to the mminimum standards for public school teachers of the same grades or subjects - - ."

It is obvious that the critical phrase regarding certification is "whose qualifications are essentially equivalent to the minimum standards", since there is implied a judgement without indicating who is to make the judgement or what the criteria are to be except "essentially equivalent".

Because the statutory language was indefinite regarding the specific requirement of nonpublic school teacher certification, and because monitoring of nonpublic schools was largely self enforcing, certification of nonpublic teachers has always been somewhat indefinite. This condition is still true. The Private School Committee could find no available source of information regarding the number of nonpublic school teachers actually holding currently valid Minnesota certificates. In recent years, the governing bodies of certain schools have adopted a policy of requiring Minnesota certificates; in other schools, such certification is not mandatory.

Perhaps some specific examples would be enlightening. Statistics compiled by the Education Department of the Minnesota Catholic Conference for the 1980-81 school year show that in the Catholic elementary schools of the state, 94% of the full time teachers actually hold valid and current Minnesota certificates, with an additional 4.5% being "certifiable". The remaining would fall into the category of having "qualifications essentially equivalent". On the secondary level, the actually certified is 89%, the certifiable 9%, and the essentially equivalent factor is the balance.

In the Missouri Synod Lutheran schools, all teachers are required to have at least a Bachelor's Degree from an approved Lutheran college; in the majority of cases these teachers would qualify for a Minnesota certificate.

In the Christian Schools International sector, 93% are either certified or certifiable.

Investigation indicates that the current trend in the majority of nonpublic schools is to encourage, urge, and in some cases require, certification for all teachers entering that particular nonpublic school. The Private School Committee was unable to discover any widespread or serious abuse of the present system. In addition, the present system permits some flexibility in the employment of teachers who may lack professional education credits but whose preparation in knowledge and background of subject matter may be quite superior.

RECOMMENDATIONS ON TEACHER CERTIFICATION

1. It is the judgment of the Private School Committee that this area of education does not require legislative action, rather the committee wishes to endorse the current statute and regulations without change, regarding teacher certification in nonpublic schools as described in M.S. Section 120.1, Subd. 2. Several reasonable factors lend support to this judgment:

a) Existing statutory language has served satisfactorily for many years; educational measuring devices such as achievement tests, post secondary attendance and graduation, community participation, etc. all indicate that nonpublic school teachers are fulfilling their instructional roles.

b) There is lacking conclusive and persuasive evidence that the legitimate educational needs of Minnesota students attending nonpublic schools in the state are not being met.

c) Voluntary compliance is meeting with increasing favor.

d) The exceptions to formal certification seem to be based upon valid reasons; the single fact of certification being no guarantee of a teacher's competency or ability to teach.

2. The Private School Committee would recommend that the Board of Teaching membership be examined and changed to reflect a greater number of nonpublic teacher representatives.

3. The Nonpublic School Committee wishes to encourage the legislature to look at alternative and creative ways to permit teachers to qualify for certification. We would hope that the quality of the total educational program successfully undertaken by an applicant for certification warrants greater consideration than the number of semester hours of credits obtained.

Considerations for determining "essentially equivalent" might include any of the following:

- a degree from an accredited college or university.
- accreditation from the association which accredits the school employing the teacher.
- participation in periodic teacher evaluations ... written or oral competencies by a prescribed procedure.
- experience of 5 years in the field, and 12 quarter credits in child psychology.
- recognition of suitable equivalencies for formal course work, whether a person of distinction acquired his/her expertise in formal academic courses, study, or life experiences (i.e.: artists, writers, musicians, government officials, social workers, etc.).

RECOMMENDATIONS FOR DEFINITION OF A SCHOOL

1. The Governor's Private School Committee would recommend that there be no change in the current M.S. 120.10, Subd. 2, and other sections that define a school for purposes of compulsory attendance.

2. The Governor's Private School Committee would endorse and recommend legislation changing the provisions in M.S. 120.12, Subd. 3 from criminal to civil action. Proper changes should also be made in Section 127.20 in order to give the county attorney authority to initiate proceedings.

3. The Governor's Private School Committee would endorse the bringing of charges against parents or guardians rather than private school authorities.

4. The Governor's Private School Committee feels there is insufficient evidence at present to warrant statutory change in current reporting from private schools on a voluntary basis.

Population By Age : Minnesota [1] (in 000's)

	5-13	14-17	Total
1970	737	312	1049
1971	707	324	1031
1972			
1973	688	328	1016
1974	670	333	1003
1975	648	335	983
1976	633	337	970
1977	607	332	939
1978			
1979	566	317	883

[1] Statistical Abstract of the U.S.; Department of Commerce; Bureau of the Census

TUITION TAX CREDIT DATA

- 240,000 black children in Catholic Schools (¼ million)
- only 1.5 of all Catholics are black
    - 8% of Catholic school students are black
    - 40% of these are non-Catholic

- D.C. - Black children constitute 73% of Catholic school-enrollment
- Chicago - Black & Hispanics make up 41% of Catholic elementary school population
- New Orleans - 9,000 of 20,000 in Catholic elementary schools are black
  - 6 schools have more non-Catholics than Catholics
- New York (Manhattan) - 78% Catholic elementary school students are black, Hispanic, oriental or other minority

Senator **Chafee**. Now, Mr. Bell, the concern that we have here is that what you are fostering is what I will call "skimming"; that is, you are giving every incentive for the bright, the well-disciplined, the well-motivated youngsters to move out of the public schools and into the private schools. And as a result, the public schools will have the ill-disciplined, the handicapped, the poor, and the immigrants. Now, what is your answer to that?

Secretary **Bell**. You see, Senator, if I felt that would be the result, after having spent my whole life in the public schools, I would not under any condition or under any persuasion be advocating this legislation.

Now, I know that many public school educators feel that way, because they have expressed it to me. But I think that there are plenty of individuals, numerous individuals, and I include myself there, who prefer the public schools, and that there are going to be an ample supply of bright and highly motivated and able students in the public schools.

I think experience in other countries and so on proves that that would be so.

I just feel, Senator, that the public schools are capable of holding their fair share of those students.

Senator **Chafee**. Now, Mr. Secretary, why are you permitting under your legislation this reinforcement for the private schools without levying requirements on them? Why shouldn't they be required to take their share of the ill-disciplined youngsters? Why shouldn't they be required to take their share of immigrant youngsters? Why shouldn't they be required to take their share of the handicapped?

Now, please don't tell me that we don't want to put anything in the legislation to that effect; we have already crossed that bridge. We crossed it when the Assistant Secretary of the Treasury spoke that there is a requirement that these schools not discriminate. So we have crossed that. We are now prepared to levy requirements on the schools.

Despite what Mr. Jones is saying, it is perfectly acceptable for this Congress to levy requirements on these schools. Now, why are we not prepared to levy the requirement that they have bilingual education, or that they take not the handicapped that they choose to take, that won't cost them too much, but any handicapped child that the public schools will take?

Secretary **Bell**. You see, the thrust of the question implies that private schools are not now taking those numbers, and I think there is plenty of evidence that they are.

We have looked at what is going on in Chicago where they have a large Catholic school system, and we find all kinds of children with all kinds of learning problems and with all kinds of income backgrounds, and many with language deficiencies attending those schools at the present time.

Senator **Chafee**. But they have the right to pick and choose. A child that is too difficult, where do they send him? Back to the public schools?

Now, if we are going to get into this I think we ought to treat everybody fairly. And why is my suggestion not proper?

Secretary **Bell**. We have contemplated the existing circumstance related to the private schools. We have looked at their enrollment practices and their admission practices, and I am just not convinced that we are going to have this kind of weeding out of students. I just don't think that the evidence, as we have looked at private schools and large private school systems that that has been happening. I don't think it is a serious problem. I haven't observed it as being that. And so why put legislation in there to solve a problem that you don't have?

Senator **Chafee**. Well, Mr. Secretary, to suggest that this problem doesn't exist, that the public schools are not required to take these youngsters, and that no such requirement is on the private schools, it seems to me you are being blind to the facts.

Secretary **Bell**. Well, the private schools are accepting large numbers of these youngsters now in many of the inner-city areas. We have large private school enrollments there. Take Chicago, as an example, and look at what the Catholic schools are doing there. They are not just taking the bright and the talented and the majority students and those of high income. That isn't the thrust of their commitment to these students.

Senator **Chafee**. Well, Mr. Secretary, what you are trying to do, as I understand it, is to promote competition here to improve education. And no matter how you slice it you have money going to the private schools. I know Mr. Jones and the other gentleman flanking you don't agree with that, but the fact is public funds are going to private schools.

Therefore, it seems to me clear that the private schools should have the same obligations levied upon them that the public schools do. Then we will have competition, and see how they do with the handicapped and the immigrants and the poor and the minorities. What do you say to that?

Secretary **Bell**. The students that attend these schools, private school groups are now arguing for increased participation in a number of our programs that we offer. And I would emphasize that every time we introduce Federal legislation we offer that alternative possibility for private school students to participate.

We have Public Law 94-142, the Federal Education for the Handicapped Act, and this permits participation of both public and private in it. So the opportunity is there in our legislation at the present time.

I pointed out earlier our desire also to offer the option with the chapter I for the disadvantaged. If that legislation passes, that will give us another opportunity to meet that. So we think that we have in the legislation that we are administering and that we have been sponsoring ample opportunity to meet that with other Federal legislation and other Federal funds where support is made available.

Senator **Chafee**. Are you prepared to have this legislation amended to require that any school that accepts tuition tax credit payments through a parent, as we have already done as far as nondiscrimination, to amend this legislation that no child could be refused for disciplinary purposes that is accepted in a public school? No child could be refused for handicapped purposes as it is in the public school? That no child could be refused because of language problems? And we might as well throw in religion, too, give equal access. Are you prepared to accept those?

Secretary **Bell**. No; I don't think that we would go that far, Senator. We don't think that that would be a wise move. Among other things, I think it would bring Federal control and surveillance and supervision over private schools that would be unacceptable to many of them.

Mr. **Bauer**. Senator, currently under the law an individual is permitted to give a contribution to his church and take a deduction on his income tax. I am not aware of anyone who suggests because we permit that the Federal Government should then attempt to regulate the practices of that church in any of the areas that you have mentioned. That is not perceived as "Federal aid to that church."

We would submit that this tuition tax credit proposal is comparable to the same way that we currently treat charitable deductions.

Senator **Chafee**. Well, I am not going to get into an analogy argument. What we are interested in here is improved education. And what you are saying is proposing a two-track system. One track is selective, can take who they want, can reject those who they believe are undisciplined, cannot accept those who have language problems or handicap problems, and they go on the other track. And then you are going to make a comparison. Obviously the ones that skim will come out best; that's no comparison. And the others—the poor, the minorities, the handicapped, the immigrants—will be left in a group, and they will suffer, and their education will suffer. That is the argument that I very strongly believe, and I find it difficult that you can't agree with that.

Secretary **Bell**. But Senator, this has not been the result. Take the Chicago schools, the public and private schools there. The private schools aren't just receiving and the enrollment isn't just related to the picture that you just described. Indeed, there is quite a microcosm of the population up there. Those Catholic schools are receiving all kinds of students with all kinds of problems, and they are willingly meeting the needs of these students.

Senator **Chafee**. Thank you, Mr. Chairman.

Secretary **Bell**. Thank you.

The **Chairman**. Well, Mr. Secretary, it may be necessary that you return, but I do want to get on to other witnesses.

As you have indicated, this is a very controversial bill, and those who oppose it will obviously try to amend it.

But I would say, as far as handicapped students are concerned, we see no problem with the amendment that we had last year that does prevent discrimination as far as admissions are concerned, but that also, if there are extraordinary expenses involved, we would not impose that on any school or school district. So we may try to address that area.

But there are the other areas where we will need the assistance of you and your staff, Mr. Secretary. I think you have made an excellent presentation, and we appreciate very much your being here this morning.

Secretary **Bell**. Thank you.

Senator Moynihan. Mr. Chairman, would you allow me just to say, I hope that I didn't in any way give offense to the Secretary in my comments about research. I surely didn't intend that, and I want to make that clear.

Secretary Bell. Well, I have been strutting around as proud as someone with a new baby, and you were implying the baby was ugly. [Laughter.]

And naturally I was going to come back on that. Now, I understand, Senator, I hadn't ought to be so darned sensitive. You don't come up here to testify and be sensitive, and I'm aware of that.

Senator Moynihan. Thank you.

Secretary Bell. Thank you.

The Chairman. Thank you very much.

Our next witness is the Honorable William Bradford Reynolds, Assistant Attorney General, Civil Rights Division.

I don't believe there has been any change at all in the bill before and the language worked out through the efforts of Senator Moynihan, Senator Bradley, myself, Senator Packwood, and others on the committee last year, with the exception of the deletion of the provision with reference to the handicapped. If that is not accurate you can correct me on that; but I would like to limit your statement, unless there is something new that you are proposing. And then I would like to speed along as quickly as we can.

STATEMENT OF HON. WILLIAM BRADFORD REYNOLDS, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. Reynolds. Mr. Chairman, I understand and appreciate that. I will not make any opening statement except simply to say that I was personally involved in the effort last year to work out an antidiscrimination provision that was acceptable to this committee at that time.

The provision that is in the bill is the same except as you have indicated. We think it is a strong provision, and it does indeed meet the necessary needs in this area.

The Chairman. Well, you might just summarize what it does, and then we will have your statement, because there may be questions from Members who are here. But I think it is essentially the same; in fact, you have indicated it is the same. That would be of some comfort to many of the Members.

Mr. Reynolds. The provision is the same. It provides for an enforcement mechanism against discrimination, against racial discrimination.

The primary enforcement mechanism is through an action by the Attorney General on complaints that are submitted to the Attorney General. The district court would have to make a declaratory judgment with respect to racial discrimination on the part of any of the schools that were complained of, at which point those parents whose children were going to those schools would be ineligible for tuition tax credits.

As the bill is now drafted, any school that is denied tax-exempt status under section 501(c)(3) of the current Tax Code would not be one which would be eligible for the tuition tax credit, provided that the Supreme Court case that is now pending, the Bob Jones Tax-Exemption Case, affirms the court below and says that the IRS does indeed have authority to deny tax exemptions on the grounds of racial discrimination.

The bill also provides that if the Court decides that case the other way, that this particular bill would not go into effect until such time as Congress has addressed the question that would be left open from that decision as to tax-exempt status of schools that do engage in racial discrimination.

I think that that, in very summary fashion, is the nature of the antidiscrimination provision that the bill contemplates.

The **CHAIRMAN**. Are there any other areas of the bill that you have addressed from the standpoint of the Justice Department?

Mr. **REYNOLDS**. The Justice Department primarily has been involved with the antidiscrimination provisions, but we have obviously reviewed the other features of the bill and do, indeed, support the legislation.

The **CHAIRMAN**. Senator Moynihan.

Senator **MOYNIHAN**. Mr. Chairman, I am very pleased to hear that the antidiscrimination provision in the legislation this year is what we agreed to last year.

Thank you, sir.

The **CHAIRMAN**. Senator Boren.

Senator **BOREN**. Mr. Bradford, under what theory are we imposing provisions of the Federal law and requirements in regard to racial discrimination in the private schools?

Mr. **REYNOLDS**. Well, the Congress has already imposed provisions of the Federal law on private schools in the area of racial discrimination under section 1981 of the Federal Code, and the Supreme Court has upheld that particular Federal enforcement mechanism to allow for rights of action against private schools that engage in racial discrimination.

Senator **BOREN**. Can you find any logical distinction, once we have traveled down the road of imposing certain requirements on private schools—can you find any legal or intellectual difference between imposing those kinds of requirements and, let us say, the requirements of due process for suspension and expulsion of students on their first amendment exercise of free speech, or the admission of illegal alien children or handicapped or others? Can you find any?

There has been the statement made that we should not go down the road of providing any kind of restrictions on private schools, even if they begin to receive public funds. And here we are imposing such a restriction. We are saying that racial discrimination is a matter of such importance to us that we are imposing that requirement.

Can you see any legal distinction between imposing that requirement and, say, simply by reference, saying that these schools shall also meet the same requirements, let's say, under Federal standards for other educational institutions for the handicapped or for some other reason?

Could we not use the same mechanism, legal mechanism, incorporate by reference the standards that Senator Chafee and I have mentioned, and utilize the same mechanism, from the legal point of view?

Mr. **Reynolds**. Well, I think there is a legal distinction. It is one that, as I understand from the colloquy that you engaged in earlier with the Secretary, you don't agree with, but we do not yet in this country have a national public school system. And until such time as Congress makes the decision that that is what we are going to have, then there are certainly legal distinctions with regard to what the Federal Government can permissibly do in the area of public schooling, and what it cannot do with regard to imposing requirements on private schools.

The clear difference of opinion, as I understand it, with regard to this particular measure is whether a tuition tax credit that is afforded to parents of children attending a private school amounts to public funding of private schools. The Supreme Court has given a very clear indication that that's not the case. It has at least two other cases before it this term with that issue presented, and I suspect we will get some further enlightenment on that from the Court before the end of the term; but at the present time I think that the answers that you were provided before, that you felt were not in agreement with your view, were certainly the correct state of the law.

So I would say, legally, there is no question in my mind that there is a reasoned and a rational basis for this.

Senator **Boren**. Well, we have talked in this committee of imposing certain requirements in regard to treatment of the handicapped. The Chairman has indicated we want to add that to this bill. Is it your legal opinion that we have the right to mandate certain equal opportunities for the handicapped by private schools which receive tuition tax credits, utilizing somewhat the same mechanism as we are here utilizing in regard to racial discrimination? Or would it be your advice to the committee that we would be exceeding our legal right to impose such requirements for equal opportunities for the handicapped on private institutions?

Mr. **Reynolds**. My view is that the committee certainly has the authority to impose a provision, to add a provision, in the bill that would address the handicapped situation. In fact, in the committee before there was such a provision, and I think certainly that that legally is right.

I would caution that once you start going in that direction it seems to me that one has to at least be cognizant of the fact that in our private school system there are any number of special-needs schools that are in existence in this country, schools that are not only definitely set up for the needs of handicapped children but also for those of gifted children.

One thing I would be very cautious of, with regard to an antidiscrimination provision in the area of the handicapped, is that you do not exclude those schools from the ability to enjoy a tuition tax credit because they are set up specifically catering to one group of people who have special needs and therefore excluding other people. Whether that would be something that would fall on the basis of a provision that relates to discrimination on account of handicap is something that I think certainly would require some careful attention.

Senator **Boren**. Then once we do start down the road of making additional requirements beyond racial discrimination, we get into the requirements on the handicapped and others, there is no legal barrier that you can see? There might be a wisdom of policy as to which requirement you would impose, but as a lawyer do you see no legal barrier to us imposing additional requirements in similar areas?

Mr. **Reynolds**. Well, I guess I would want to see the requirements and the manner in which you did it. But in trying to be responsive to your question, Senator, my general sense is that Congress does have the authority to legislate in these areas. And, depending on how it crafts the legislation, I would think that if it were carefully done it probably could be done in a way that would pass legal scrutiny.

Senator **Chafee**. Mr. Reynolds, I think it is clear from your answers to Senator Boren that the Congress has the power to levy certain responsibilities on the schools. In the legislation that the administration has submitted that is present as far as the civil rights goes; isn't that correct? As far as race goes?

Mr. **Reynolds**. That's right; that has already been done by Congress in the racial area. It is now unlawful for private schools to engage in racial discrimination, and the Congress has already done it.

Senator **Chafee**. Now, how about the requirement that there be no discrimination on the base of religion? That is certainly acceptable, isn't it?

Mr. **Reynolds**. I think that all of these questions raise some difficult constitutional considerations. And obviously the manner in which Congress will go about doing that has to be sensitive to establishment-clause concerns and free-exercise concerns.

Senator **Chafee**. Well, the requirement that there be no discrimination on the basis of religion hardly gets into violating the establishment clause, does it?

Mr. **Reynolds**. I think there are some hypotheticals one could come up with that would suggest that you could get into an establishment-clause question or a free-exercise question, Senator.

Senator **Chafee**. Could you give me an illustration of what you are talking about?

Mr. **Reynolds**. Off the top of my head all I can say is that I think if you start talking about the private school sector with parochial schools and what can or cannot be done under the first amendment in that area, you do run into some substantial first amendment problems.

Senator **Chafee**. Well, this is the first time I have ever heard the suggestion that when Federal funds were involved that the Federal Government doesn't have the right to levy a requirement that there be no discrimination on the basis of religion, for example. Can you give me other illustrations where that requirement has fallen down?

Mr. **Reynolds**. I guess when one makes a broad and general statement like that, it masks over some serious questions. I think you are asking for a broad general signoff on that kind of a statement, and I would suggest to you that it needs to be thought through more carefully than that. I think that, generally speaking, there should be no discrimination on account of religion, but I certainly think that there are very legitimate educational institutions in our country that are tied to a religion, and I think that they certainly are entitled to operate the way they currently operate.

Whether in doing that you would wind up with an argument that that is discriminatory against other religions or people of other religions who might want to go to those schools, and how you would deal with those kinds of questions does indeed raise matters that I would want to think through more carefully before I gave you a blanket response to your question.

Senator CHAFEE. I think you are putting your finger on the problem here. We may well have a neighborhood that is predominately of one religion, and they construct a school. And therefore there is no further requirement for a public school nearby, thereby imposing a requirement that the youngsters travel a considerable distance.

Now, if the Federal Government is going to get into the business of subsidizing the youngsters that go to that school, they are imposing a burden on the remaining youngsters who do not meet those religious standards. And this presents difficulties, and I wonder why the youngster who does not meet those religious requirements isn't entitled to attend that school if his parents so choose. Do you see any problem with that?

Mr. REYNOLDS. It goes back to the fundamental point of controversy, as to whether one believes or does not believe that the Federal Government is subsidizing the schools by enacting or legislating a tuition tax credit program. We are obviously on a different point on that, and I guess we agree to disagree.

Senator CHAFEE. Well, you disagree on the policy. You are here as a lawyer. We had the policy man before you, and there certainly can't be any constitutional problem—this is unique. I am interested in hearing this, that the United States can impose a requirement that there can be no discrimination based on religion when Federal funds are involved. That is what you are suggesting, is that right?

Mr. REYNOLDS. I told you, Senator, that I was not going to get pushed into the situation where with a categorical question I was being required to give a categorical response.

I see that question as having an awful lot of very difficult variables that would have to be considered, and I would be more than happy to undertake to provide you with a written response to a written question in that area if you would like to pursue it, but I am not in a position right now to give you a categorical response on that.

Senator CHAFEE. I will submit it and appreciate the answer.

Thank you, Mr. Chairman.

[Senator Chafee's question and William Bradford Reynolds answer follow]:

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United States Senate
COMMITTEE ON FINANCE
WASHINGTON, D.C. 20510

May 16, 1983

The Honorable William Bradford Reynolds
Assistant Attorney General
Department of Justice
Civil Rights Division
Washington, D.C.

Dear Mr. Reynolds:

During the public hearing conducted by the Senate Finance Committee on the Administration's Tuition Tax Credit proposal on April 28, 1983, we engaged in discussion on the question of whether private schools which receive federal funding should be prohibited from practicing discrimination on the basis of religion.

At that time, you requested that the question be posed in writing. I am, therefore, submitting the following question for the hearing record: Should private schools which receive federal funds, such as the pass-through of tuition tax credit payments made to the parents of private school students, be permitted to discriminate on the basis of religion?

I would appreciate your response to this question. Thank you for your cooperation.

Sincerely,

John H. Chafee

John H. Chafee
United States Senator

JHC/wst

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

RCVD 6-22-83

13 JUN 1983

Honorable John H. Chafee
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Chafee:

This is in response to your letter of May 16, 1983, in which you asked whether private schools whose students receive tuition tax credits under the Administration's proposed bill should be prohibited from discriminating on the basis of religion as well as race.

The issue you raise is not new. It was raised and considered by Congress during the deliberations on Title VI of the Civil Rights Act of 1964, which prohibits discrimination in Federally assisted programs on the basis of race, color, and national origin, but not religion. In our view, the reasons why "religion" was omitted from that bill, as a proscribed basis for discrimination, are still valid.

The Civil Rights bill formulated by the Kennedy Administration in 1963 would have prohibited discrimination on the basis of religion in Federally assisted programs (see 110 Cong. Rec. 2462, February 7, 1964), as well as in public accommodations, public facilities, and employment. The committee bill, and the ultimate compromise bill, did not contain this prohibition. Rep. Celler, floor leader in the House, explained (ibid.) that local sectarian welfare groups and sectarian schools and universities were already receiving some forms of Federal financial assistance that would be covered by Title VI. It was undisputed that these institutions served a valuable public function. During the hearings, which had been extensive, there was simply no testimony suggesting that, as a general matter, these or secular institutions engaged in religious discrimination or, if some religiously operated institutions did have religion preferences, that it constituted an important problem. See, also, 110 Cong. Rec. 9085-9087, April 25, 1964.

We are aware of no information to indicate that the circumstances today are any different. The antidiscrimination clause in our bill is thus directed at the more realistic source of concern, i.e., private segregated academies established in the wake of court-ordered desegregation of the public school system. This has been the historic problem, and our bill takes a strong and unequivocal position against it. At the same time, we have framed the language in sufficiently broad terms to reach all exclusionary practices based on race, no matter what the school's explanation or when it was established.

We know of no public policy opposed to religious education as such. On the contrary, cases under the Free Exercise Clause of the First Amendment have made it clear that, as a general rule, there is a protected right to join together and furnish a religiously oriented education to one's children, *e.g.*, *State of Wisconsin* v. *Yoder*, 406 U.S. 205 (1972). To prohibit religiously based schools from "discriminating" on the basis of religion in order to share in the tax treatment afforded all other schools would put at risk protected religiously oriented practices. As long as these schools fulfill a legitimate function, they should be free from the "entanglement" that would result from governmental inquiries into the schools' religious orientation.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Senator Dole

Senator **Moynihan**. Mr. Chairman, could I just make a comment to Senator Chafee?

The **Chairman**. Yes.

Senator **Moynihan**. There is a free-exercise clause as well as an establishment clause. It seems to me entirely within the powers of the Congress to withhold Federal funds or Federal aid if they so choose, because Congress can do anything it wants of that order. But there is a limit to the powers of Congress where the free-exercise clauses are involved.

The free-exercise clauses continue to be understood in their original meaning. The establishment clause has completely been misread in the last 50 years. No one remembers what an "established church" in Rhode Island was like.

But, be that as it may, the issue is whether we want to help these schools which basically come together, the largest number of them, for religious purposes. Most democratic societies have no difficulty with this; we do.

I think the Assistant Attorney General was absolutely right to say let him give you an answer in writing. It is a very hard question.

Mr. **Reynolds**. Thank you, Senator.

The **Chairman**. Thank you very much, Mr. Reynolds.

I would like to include in the record at this point a statement from Senator Hollings—maybe earlier when other Senators had their statements—in opposition to tuition tax credits, along with a letter of transmission from Senator Hollings.

[Senator Hollings' letter and prepared statement follow:]

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OFFICE OF TECHNOLOGY ASSESSMENT
NATIONAL OCEAN POLICY STUDY

April 28, 1983

The Honorable Robert Dole
Chairman
Senate Committee on Finance
Washington, D.C.

Dear Mr. Chairman:

Since I have testified in opposition to tuition tax credit legislation several times before, I see no reason to appear before your Committee again. However, I would greatly appreciate your making my attached statement a part of your hearing record on this legislation.

I certainly thank you for your accommodation.

With personal regards, I am

Fritz

Ernest F. Hollings

APRIL 28, 1983
TESTIMONY OF SENATOR ERNEST HOLLINGS
REGARDING TUITION TAX CREDITS

Mr. Chairman, I appreciate having the opportunity to testify before the members of the committee gathered here today. I have testified before this committee regarding tuition tax credits on two prior occasions, and since my position should be familiar to you, I will keep my remarks brief.

I am here today to voice my strenuous opposition to the Educational Opportunity and Equity Act of 1983, S. 528. I am opposed to this tuition tax credit legislation because it will strike a serious and debilitating blow to our nation's public education system. The United States is being challenged at every turn by international competitors and the one institution with the most potential for aiding our attempted resurgence as the preeminent force in the international arena would be severely and irreparably harmed by this tuition tax credit scheme.

I have opposed tuition tax credit (TTC) legislation since 1978 when the Packwood-Moynihan TTC measure was introduced in the Senate. The arguments used to defeat this legislation back in 1978 are even more poignant today; this Educational Opportunity and Equity Act of 1983 is just as onerous and ill-conceived as the Packwood-Moynihan measure of 1978. The legislation before us today would turn our nation's education policy on its head, benefit the few at the expense of many, add a sea of red ink to the Federal budget deficit, violate the clear meaning of the Constitution, foster discrimination against the handicapped and disadvantaged, and ultimately destroy the diversity and genius of our system of public education.

Let us realize at the outset that there is a fundamental duty of the U.S. government regarding our educational system. The government's duty to the public is to provide public schools. The duty of the government toward private schools is to leave them alone. The distinction and the duties are fundamental. Now comes the Educational Opportunity and Equity Act of 1983 and the duty to leave the private alone is suddenly inverted to the duty to provide for them. And provide it would.

THE FUNDING INEQUITIES

While Federal funds are presently being provided to the needy and disadvantaged in public and private schools, implementation of this tuition tax credit plan would give private schools vastly more money per pupil than the public schools. This past March, I released a study compiled by the Council of Great Schools and the American Association of School Administrators that surveyed the impact of TTCs on 65 urban schools systems. The study used last year's TTC bill -- $100 tax credits for the first year, $300 for the second, and $500 for the third. The results are dramatic.

By accounting for current Federal government funding for private and public school students and then accounting for the impact of the TTC at the above-mentioned rates, the study found that the public school children would see their per pupil expenditure fall from $207 in 1980-81 to $105 in 1984-85. This constitutes a fifty percent decrease! On the other hand, per pupil expenditures for private school students would be increased from $43 per child to $329. This amounts to an increase of 665 percent! While the amount of allowed credits has been scaled back in S. 528 and the impact would not be as pronounced, the fact remains that private schools will receive a great deal more than the public schools, especially in light of the current Administration's budget cuts for education programs.

A BUDGET BUSTER

Regardless of attempts to reduce the amount of the allowable TTCs and target them toward lower income individuals, S. 528 will cost the Federal government literally billions of tax dollars to implement and maintain. The National Coalition for Public Education has estimated that S. 528, with its $100, $200 and $300 TTCs, would cost an estimated $3 billion in its first three years and upwards of $1.2 billion every year after that with no lid and no way to control spiraling costs as additional students enter the private and church schools.

During these times of fiscal austerity and record budget deficits, I am dreadfully alarmed that the Administration and the supporters of this bill would be pushing another tax hemorrhaging measure. Our government simply cannot afford to have this bill enacted into law. By passing the TTCs here and implementing the third year tax cut and indexing there, we would simply be exacerbating the existing fiscal problems we currently face, all to the benefit of our rich and at the expense of the rest.

UNCONSTITUTIONAL

This TTC legislation is patently unconstitutional as it flies in the face of both the First and Fourteenth Amendments to the Constitution. The Supreme Court has held that a similar state tax tuition credit program violated the Constitutional principles of separation of church and state because religious schools would be recipients of Federal aid. Since religious schools or parishes would be beneficiaries of tax credits, Federal monies would tend to advance and foster religion at the public's expense. There is no reason to believe that the Supreme Court will rule otherwise, despite the fact that it has recently heard oral arguments on a similar state TTC plan.

FOSTERS DISCRIMINATION

Although S. 528 contains provisions prohibiting racial discrimination, discrimination on other grounds is not prohibited. Only about 2.7% of all religious schools provide programs for the handicapped; 3.0% of all non-public schools provide vocational education. Since the programs are not available to these populations in the private school system, costly educational programs for these students would fall within the realm of the public schools. Furthermore, the protection against racial discrimination is very weak and relies on individual complaints before legal action is taken.

SUMMARY

As a parent, a citizen, and an officeholder, I have always believed that public education is the best investment a nation can make. It develops a diversity, a competitiveness, a competence that is nowhere else available. Our public schools are run by over 16,000 local school boards, and theirs has always been the fundamental role. Those who pose the straw man of a public education monopoly have not traveled this land and breathed the diversity and the vitality of 107,272 public schools. No private school can boast this kind of diversity. The public school teaches the American Way as no other school can teach it. There is no substitute. Our public schools are and must remain the cornerstone of America's education system. This is not to deny or deprive private education, which can and should remain a vital part of our nation's education. But we are being asked now to discriminate in favor of the private, and what is left alone and unfunded is public education. This two-tiered educational system being proposed to us today cannot be tolerated and I urge the honorable members of this Committee to demonstrate their dedication to equitable education for the poor and wealthy alike by defeating S. 528.

Senator **Boren**. Mr. Chairman, may I also submit for the record a resolution on the question of separation of church and State, the issue we have been addressing? The resolution by the Southern Baptist Convention, June 15, New Orleans, La., 1982 meeting?

The Chairman. It will be made a part of the record.

[The resolution follows:]

Southern Baptist Convention, New Orleans, La., June 15–17, 1982

RESOLUTION ON TUITION TAX CREDIT

Whereas, The Congress of the United States is considering legislation to give taxpayers a tax credit (that is, a direct subtraction from one's tax bill) for tuition payments, and

Whereas, The effect of such legislation would be of most benefit to those who could afford to finance their children's attendance at private schools, including elite schools, and

Whereas, Most private elementary and secondary schools are related to churches and exist to serve the religious mission of sponsoring churches, and

Whereas, Tuition tax credit legislation carries the potential of financing private education at the expense of public education, and

Whereas, The attorney general of the United States has issued an advisory opinion that such legislation is of doubtful constitutionality under the First Amendment, especially with regard to tuition paid to elementary and secondary schools, and

Whereas, The Baptist Joint Committee on Public Affairs has opposed such legislation because of its threat to the principle of separation of church and state; Therefore, be it *Resolved*, That we call upon President Ronald Reagan to reconsider his support of a tax credit legislation now under consideration by Congress; Be it further *Resolved*, That we, messengers to the Southern Baptist Convention, meeting in New Orleans, Louisiana, on June 17, 1982, register our opposition to all tuition tax credit legislation pending in Congress, urge the Baptist Joint Committee on Public Affairs to continue to oppose such legislation, and express our concern over such legislation's threat to the First Amendment guarantees of non-establishment of religion and the free exercise of religion.

Adopted by the Southern Baptist Convention June 15–17, 1982, New Orleans, La.

Harold C. Bennett, Executive Secretary-Treasurer, Executive Committee of the Southern Baptist Convention.

Senator **Moynihan**. And we ought to have somebody who is determined to have a separation of church and State and prayer in the public schools.

The **Chairman**. We probably will be calling you back, Mr. Reynolds. Again, we appreciate your testimony.

I want to announce for the witnesses who haven't yet appeared that Senator Chafee will chair when I have to depart, until 1, and Senator Durenberger from 1 to 1:30. Beyond that we are not certain, but somebody will be here to preside. I am going to do what I have rarely done and exercise the chairman's prerogative to call a Kansas witness, Nancy Lindberg, who would not appear until later; but I may not be able to return. So I have asked Nancy if she would mind, if no one else would object to that.

First, I want to apologize to Nancy for being less than totally responsive to a question that she directed to me in Great Bend, Kans., recently, and I appreciate your being here today.

STATEMENT OF NANCY LINDBERG, PRESIDENT, KANSAS NATIONAL EDUCATION ASSOCIATION

Ms. **Lindberg**. Thank you, Senator.

Committee members, I am Nancy Lindberg. I am the president of the Kansas National Education Association, and I am here today representing 20,000 teachers and education support personnel from across the State of Kansas.

I am here to express Kansas NEA's total opposition to the wrongly titled "Education Opportunity and Equity Act of 1983," S. 528.

I am here as a classroom teacher in the public schools of Kansas, as a citizen, and as a taxpayer of one of the numerous States in this country that stands to benefit very little from any tuition tax credit scheme.

As many of you already know, Kansas, along with many other States in the Midwest and western areas of our country have so few children in nonpublic schools, that the majority of the taxpayers in these areas will be forced to pay for something that will not aid them in the least.

For example, the U.S. Department of Education's National Center for Education Statistics reported that in the fall of 1980, Kansas private school enrollment was less than 35,000—or only 7 percent of the children in the State of Kansas. Compare this with States such as Florida with private school enrollment of 205,000, Massachusetts with 140,000, or Michigan with 215,000, and you will see that the taxpayers in Kansas will indeed suffer discriminatory effects from any tuition tax credit proposal.

We feel that this is an unfair burden to ask of Kansas citizens. It is one thing to ask us to share jointly with citizens in other States the cost of highways, public transportation, and public schools, but it is quite another to ask us to subsidize higher income families who choose to send their children to private schools.

In addition, we must protest the administration's tuition tax credit proposal in light of Federal expenditures for public education in the State of Kansas. We have seen funding for most of the major Federal education programs diminish in the last several years. For example, our chapter II funds decreased from nearly $7 million in 1980 to only $4.5 million for fiscal year 1983. Likewise, vocational and adult education funds slipped from an appropriation of $9.3 million in fiscal year 1980 to only $7.9 million in fiscal year 1983; impact aid was also sliced by a quarter, from $8.3 million in fiscal year 1980 to $6.1 million in fiscal year 1983. And in nearly all of these cases, plus one other, Chapter I funds, the Reagan administration proposal for fiscal year 1984 proposes even deeper cuts.

The administration has proposed slashing vocational and adult education funds to only $4.3 million and has attempted to cut vitally needed chapter I moneys from a fiscal year 1980 funding level of $22 million to $19 million in fiscal year 1984.

Further fueling our discontent with the tuition tax credit proposal are statistics prepared by the Council of Greater City Schools and the American Association of School Administrators last year. The study, "The Effect of Tuition Tax Credits on Urban Schools," analyzed how public schools in large urban centers would fare compared with their private counterparts should the 1982 Reagan administration tuition tax credit proposal have passed. We must keep in mind that the figures used in the statistics were based on the larger credits called for by the administration's proposal in the last

Congress, but I know that you will see the clear trends that are projected.

In the three Kansas cities studied—Kansas City, Wichita, and Topeka—overall Federal funding for the public schools is on the decline between the period 1980-81 and 1984-85; yet, with tuition tax credits, private schools in these cities would have gained tremendously.

The figures are stark:

In Kansas City, Federal per pupil expenditures for public schools would decrease from $138 to $108 in the 5-year period, while Federal per pupil expenditures for the Kansas City private schools would leap from $46 to $338. In Topeka, per pupil Federal expenditures for public school students would decline from $82 to only $57, while private school students in that city would get nearly 10 times the subsidy in 1984-85—$315—as they were getting in 1980-81.

And in Wichita, funding would be cut by a quarter, from $109 to $79, while private students would go from a $49 subsidy to a $331 subsidy in the 5-year period.

It is clear that the administration, through its tuition tax credit proposal, is only adding injury to the standing insult to public education brought on by its budget cuts.

Members of Kansas-NEA believe that choice and diversity must exist in education as in other sectors of the lives of citizens. Government should of course, raise public funds for public purposes.

But we disagree fundamentally and completely with proposals to raise public funds and use them for private purposes.

I very much appreciate this opportunity to present Kansas-NEA's views on tuition tax credits.

Thank you, Senator Dole and Committee.

The CHAIRMAN. Senator Boren?

Senator BOREN. Mr. Chairman, I want to thank the witness for the very excellent testimony, and I would say on an objective basis it's by far the most sensible testimony that we have received this morning.

[Laughter.]

Ms. LINDBERG. Thank you.

Senator BOREN. I would like to add into the record comparable figures that you have cited for Kansas City for Oklahoma City, where we projected under the administration's proposal Federal expenditure per pupil in Oklahoma City would decline from $159.17 to $124.49, and Federal expenditure for private pupils would increase from the present $9.52 to $295.70 during the same period. And we are seeing the same thing.

I couldn't agree more with your last statement that we of course support the right of private education, and we in Oklahoma have always believed very strongly in the right of private education and the separation of church and State. We certainly take exception to the idea of using public funds for private purposes.

I wonder—since we will have a great regional impact, and that's what I gather from your discussion, there are many, many States where a very small proportion of the students are in private schools, therefore the tax dollars from those citizens of those States will be going principally to other areas of the country—I don't know whether you were here earlier, but if—and I can assure you that it will be only after long debate, and I hope that I will have an opportunity to read your statement in full on the floor of the Senate if this matter ever gets there, and every other statement that I can find to read on the floor of the Senate, which I fully intend to do along with offering amendments that would prevent the discrimination on the basis of religion and sex and the physical status of people, and others which Senator Chafee has already mentioned, so there will be adequate opportunity for that.

But I wonder. Let's say that worse came to worse, if this happened to move on toward passage. Wouldn't one way for trying to redress at least partially the idea of the regional impact and unfairness to public education be to allow and require an offsetting at in equal amount of tuition tax credit back to the public school?

Ms. **Lindberg**. When that was mentioned earlier I thought that sounded like a great idea.

Senator **Boren**. That would be a great help to States like Kansas and Oklahoma, if we have to have a proposal like this, would it not?

Ms. **Lindberg**. Yes.

Senator **Boren**. And, you know, I couldn't understand, and I wonder if you could follow any reason that Secretary Bell seems to think there is going to be a great advantage to private education by a $300 tuition tax credit, but he could figure out no reason why there would be any advantage of this additional money flowing to public education. Can you understand why there wouldn't be at least as much advantage to public education for parents in public education to get a tuition tax credit as there would be an advantage to private education?

Ms. **Lindberg**. It would be an advantage for public schools, because there are a number of parents that are not able to pay the book rental fee and all the costs that go with the beginning of schools. If we had a tuition that parents would want to pay, that they could pay, then we could have a better quality public education across the country.

Senator **Boren**. I wonder about this. I wonder if NEA or if you personally have any figures, and if you don't have them personally, maybe you could get them for us for the record, but a lot has been made here about the fact that private schools in other parts of the country have a large number of handicapped, they have a large number of minority students; it was said that parochial schools in some parts of the country have 20-percent minorities. I don't doubt that, because you have patterns in some parts of the country where vast percentages of the school students in those States traditionally and for long periods of time have gone to parochial schools. Certainly I am not critical of that, but I wonder in our part of the country, and particularly, let's say, on across the South, if the same kind of figures would prevail, where we do not have the traditional pattern of a very large religious community.

Let's say we don't have—in Oklahoma we might have 1 percent of the students or less in let's say Catholic schools. And I'm sure that that's true in South Carolina, Alabama, Mississippi, across the South. I wonder if those same percentages would hold true in terms of percentage of black students, percentage of poor students, percentage of students with religious diversity and so on. I wonder if those same kinds of treatment of the handicapped—I wonder if those same kind of statistics would hold true, or if we would not find, indeed, that the public schools in those parts of the country bear a much higher proportion of taking care of those who let's say are at the bottom end economically or are a part of racial minorities, or otherwise.

Ms. LINDBERG. I don't have those statistics, and I would be glad to see if I could get those for you. I would agree with you that it is probably very different in our area.

Senator BOREN. I think it would be very helpful if you could, perhaps with the assistance of the NEA, provide us with a State-by-State breakdown, because I think it is very important. And I applaud the courage of Senator Chafee, being from Rhode Island, to take the position that he has on this particular issue. I think it shows unusual sensitivity on his part.

But I think that the breakdown of these kinds of figures would make our friends in Massachusetts, in Michigan, in States where we have large populations, let's say, of Catholic populations. I think if they would see the effect that this might have in other areas of the country, not in their own areas of the country but in other places, in terms of what it might do to change the nature of who goes to public education and who goes to private schools, I think that they might well want to reassess their own position on this issue when they looked at the national impact, and I would appreciate it if you could obtain that for us.

Ms. LINDBERG. I would be glad to try to get that.

There is also one other key element of the private schools in the State of Kansas, where you have teachers in the private schools that do not have to be certified, or you do not have to be an accredited qualified school. So you are looking at questioning the quality for the private schools in the State of Kansas and I don't know if that is similar across the country.

Senator BOREN. We have the same problem, and I would agree with you. And I certainly, if we go down this road, am going to fight for the provision that we have to have the same kind of teacher certification standards prevailing so that we make sure that the students who do end up in some of these schools, that you cannot have a fly-by-night operation, that you have to have faculties that are professionally trained and meet the same accrediting standards.

We must assure also equal opportunity for those children whose parents might decide to put them in those schools, and that would include making sure those teachers are certified by the appropriate agencies.

The CHAIRMAN. Senator Chafee?

Senator CHAFEE. Thank you very much, Ms. Lindberg. I appreciate that testimony. That was excellent, and I'm so glad you came on. You keep working on your congressional delegation, and I think it will be certainly helpful. [Laughter]

Ms. LINDBERG. It's difficult, but I will.

The CHAIRMAN. Well, Nancy, thank you very much. I don't want to get into an argument with you today; I have already done that one time, but I didn't win.

But I would call your attention to Library of Congress Congressional Research Service, document that I referred to earlier, talking about other tax expenditures finding their way into public schools. I don't think the figures quoted from the Topeka Star may reflect this most recent study, which was made available to members this morning.

I don't suggest that will change any minds. I certainly understand the diversity of opinion on this issue. But we do appreciate your excellent testimony. I don't quarrel with the testimony, and we certainly will be working with you and listening to others from the NEA later on this afternoon.

Thank you very much.

Ms. LINDBERG. Thank you, Senator Dole.

[The prepared statement of Ms. Nancy Lindberg follows:]

PREPARED STATEMENT OF NANCY LINDBERG, PRESIDENT, KANSAS-NATIONAL EDUCATION ASSOCIATION

Mr. Chairman and committee members, I am Nancy Lindberg, President of Kansas-NEA, and I am here today representing 20,000 teachers and education support personnel across the State of Kansas

I am here to express Kansas-NEA's total opposition to the wrongly-titled "Education Opportunity and Equity Act of 1983", S. 528.

I am here as a classroom teacher in the public schools in Kansas, and as a citizen and taxpayer of one of the numerous states in this country that stands to benefit very little from any tuition tax credit scheme.

As many of you may already know, Kansas, along with many other states in the midwest and western areas of our country have so few children in nonpublic schools, that the majority of the taxpayers in these areas will be forced to pay for something that will not aid them in the least. For example, the U.S. Department of Education's National Center for Education Statistic reported that in the fall of 1980, Kansas private school enrollment was less than 35,000—or only 7 percent of our entire school population. Compare this with states such as Florida, with a private school enrollment of 205,000; Massachusetts with 140,000; or Michigan with 215,000—and you will see that taxpayers in Kansas will indeed suffer discriminatory efforts from any tuition tax credit proposal.

We feel this is an unfair burden to ask of Kansas citizens. It is one thing to ask us to share jointly with citizens in other states the cost of highways, public transportation, and public schools, but it's quite another to ask us to subsidize higher income families who choose to send their children to private schools.

In addition, we must protest the administration's tuition tax credit proposal in light of Federal expenditures for public education in the State of Kansas. We have seen funding for most of the major Federal education programs diminish in the last several years. For example, our Chapter II funds decreased from nearly $7 million in 1980 to only $4.5 million for fiscal year 1983; likewise, vocational and adult education funds slipped from an appropriation of $9.3 million in fiscal year 1980 to only $7.9 million in fiscal year 1983; Impact Aid was also sliced by a quarter, from $8.3 million in fiscal year 1980 to $6.1 million in fiscal year 1983. And, in nearly all of these cases, plus one other—chapter I funds—the Reagan administration proposal for fiscal year 1984 proposes even deeper cuts.

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Members of Kansas-NEA believe that choice and diversity must exist in education as in other sectors of the lives of citizens. Government should, of course, raise public funds for public purposes. But we disagree fundamentally and completely with proposals to raise public funds and use them for private purposes.

I very much appreciate this opportunity to present Kansas-NEA's views on tuition tax credits.

Thank you.

The CHAIRMAN. Now, before I leave I would like to call the next panel. I am going to leave them to the tender mercies of Senator Chafee and Senator Boren. If they suddenly disappear, I'll know that they didn't prevail.

Mrs. Wallie Simpson, principal, Lower East Side Community School, New York, N.Y., on behalf of the Council for American Private Education;

Dr. Thomas Vitullo-Martin, director of research, Metroconomy, Inc., New York, N.Y., and

Mr. Richard B. Dingman, legislative director, the Moral Majority, Washington, D.C.

And I am going to add to that panel former Gov. Edgar D. Whitcomb, a Governor of the State of Indiana, on behalf of the Accelerated Christian Education, Inc., Lewisville, Tex.

We will be very pleased to hear from this panel. We will start with Mrs. Simpson.

As I have indicated to other witnesses, you may proceed in any way you wish. We are under some time constraints; we would hope that you might be able to insert your statements and then summarize your statements for the record.

STATEMENT OF MRS. WALLIE SIMPSON, PRINCIPAL, LOWER EAST SIDE COMMUNITY SCHOOL, NEW YORK, N.Y., ON BEHALF OF THE COUNCIL FOR AMERICAN PRIVATE EDUCATION, WASHINGTON, D.C.

Mrs. SIMPSON. Thank you, Mr. Chairman.

I would like to say before I begin reading my statement that I very strongly invite you to ask me questions following this, because of the fact that I started a school in New York City 7 years ago, and I have had a great deal of experience for over 8 years, firsthand experience, with parents, their frustrations, what is motivating them to want to have an option, why they do not have options concerning private schools, and the voluntary actions they take to be certified, and many other aspects. I would be very happy if you would question me following my statement.

Recent scores on the reading tests given in the New York City's public elementary and junior high schools in district 1, where the school I started is located, showed over 81 percent of the students were reading below their grade level. Also, in the 30 other school districts in New York City and districts in large urban centers across the Nation, there were a disproportionate number of students reading below their grade level. And of course we are all concerned about the underachievement crisis in mathematics and science. America is still faced with the problem of underachievement in the public school system after decades of practice, experiments, grants, studies, and rewards, at the expense of the taxpayer.

Now, options are natural birthrights for all human beings. The affluence, seeded by industrialization in this country, was achieved because of a constitution that encouraged free enterprise. This system of fundamental principles according to which America is guided also provided the springboard for the onset of high technology.

America's public school system was initiated and developed in good faith, based on the national principle of assuring an education for all Americans—the poor, the middle class, as well as the rich.

We applaud the taxpayers for their noble effort, but the plain truth is, the public school system isn't working. I am referring, of course, to the large urben centers across the United States in the inner cities.

The overwhelming majority of the children are not learning in the system, and the social atmosphere is tainted with violence, drug abuse, and an appalling lack of civility. To be sure, it is a system completely out of control, and alternative school systems for most parents are beyond their means. Options for them are nonexistent. Parents are forced to send their children to unworkable schools because they, the parents, do not have the money to send them to schools in which they are confident that their children can learn.

America's greatest gift to its citizens is the opportunity to pursue independence, to be responsible for one's self and his or her children. Those without a sense of independence are stagnant, docile, complacent. And, most devastating—and this is a Pandora's box, my distinguished people here—parents are abdicating their parenting responsibility.

Now, why is there an ever-growing void between parents and the public schools? Why are more and more parents inaccessible to the public schools, and relinquishing parenting?

I strongly support the tuition tax credit initiative because it represents a beginning to restore the values on which the foundation of this country rests—that is, the need to have options; not a monopoly, but rather a competitive educational system in order that all children may benefit.

I am not concerned that the legislating of tuition tax credit will encourage private schools to increase their tuition; private schools know that they exist at the pleasure of parents. Private schools realize that they must have a quality educational program. They must be productive. And they must be accountable.

Before tuition tax credit became an issue, private schools were already increasing their tuition, because they simply must pay their bills.

Parents struggle to pay increased tuition because the schools are meeting the needs of their children and are successfully preparing them to be functional, responsible adults.

The tuition tax credit is a welcomed incentive for parents to begin to look for an alternative school system that can successfully prepare their children for adulthood.

Senator CHAFEE. Thank you very much, Mrs. Simpson, for your fine testimony.

I think what we will do is take the testimony from each of the witnesses and then have questions.

Why don't you proceed?

Well, I think, in gubernatorial courtesy, since we have two Governors up here, we ought to have the former Governor from Indiana.

[The prepared statement of Mrs. Simpson follows:]

PREPARED STATEMENT OF MRS. WALLIE COOPER SIMPSON, LES INTERNATIONAL COMMUNITY SCHOOL (FOUNDER/DIRECTOR), New York, N.Y.

Recent scores on the reading tests given in the New York City's public elementary and junior high schools in district 1 (LES International Community School's district) showed over 81 percent of the students were reading below their grade level. Also, in the 30 other school districts in New York City and districts in large urban centers across the Nation, there were a disproportionate number of students reading below their grade level. And, of course, we all are concerned about the underachievement crisis in mathematics and science. America is still faced with the problem of underachievement. In the public school system after decades of practice, experiments, grants, studies and rewards at the taxpayers expense.

Options are natural birthrights for all human beings. The affluence, seeded by industrialization in this country was achieved because of a constitution that encouraged free enterprise. This system of fundamental principles according to which America is guided also provided the springboard for the onset of high technology.

America's public school system was initiated and developed in good faith, based on the national principle of assuring an education for all Americans—poor, the middle class as well as the rich. We applaud the taxpayer for their noble effort, but, the plain truth is, the public school system isn't working. The overwhelming majority of the children are not learning in the system and the social atmosphere is tainted with violence, drug abuse, and an appalling lack of civility. To be sure, it's a system completely out of control, and, alternative school systems for most parents are beyond their means. Options for them are non existent. Parents are forced to send their children to unworkable schools because they (parents) do not have the money to send their children to schools in which they are confident that their children can learn.

America's greatest gift to its citizens is the opportunity to pursue independence, to be responsible for one's self and his/her children. Those without a sense of independence are stagnant, docile, complacent and—most devastating—abdicate parental responsibility. Why is there an ever growing void between parents and the public schools? Why are more and more parents inaccessible to the public schools and are relinquishing parenting?

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STATEMENT OF HON. EDGAR D. WHITCOMB, FORMER GOVERNOR OF THE STATE OF INDIANA, ON BEHALF OF THE ACCELERATED CHRISTIAN EDUCATION, INC., LEWISVILLE, TEX.

Governor **WHITCOMB**. Thank you, Mr. Chairman.

Senator **CHAFEE**. Ex-Governors have few privileges, but let's make this one.

Governor **WHITCOMB**. Thank you.

Mr. Chairman, distinguished members of the committee, I am going to abbreviate my statement which I have presented and ask that the statement together with the results of the California achievement test be entered into the record.

Senator **CHAFEE**. We certainly will.

[The prepared statement and the test results follow:]

Statement by
Edgar D. Whitcomb
former Governor of Indiana
representing
Accelerated Christian Education
2600 Ace Lane
Lewisville, Texas 75067

Senate Finance Committee
April 28, 1983

Accelerated Christian Education, Inc. (A.C.E.) is an organization which develops curriculum for grades K thru the 12th grade, prints text material and instructs pastors in the procedures necessary to operate Christian church-schools.

The first such school was established in Garland, Texas by Dr. Donald R. Howard, Ph.D., in 1970 with 45 students and the system now serves 5000 church-schools with 500,000 children.

As a former member of the Indiana State Senate some 30 years ago and more recently as Governor of the State of Indiana I have become well acquainted with the educational establishment in this country and the myriad of problems facing public officials today. As Governor education was given the highest priority in my administration. We poured far more money into education than any administration in history, while the quality of education continued to decline; and the educational establishment continued to demand more and more money in order to provide what they called "Quality Education."

We are concerned about:

illiteracy (23,000,000 illiterates in the U.S. today)
increased costs of welfare programs
illegal use of drugs
excessive use of alcohol
epidemic of venereal diseases
state funded abortions (1,000,000 in 1982)
increased teen age suicides (No. 1 killer of teen agers)
run away children (330,000 in 1982)
over crowded mental institutions
over crowded jails
over crowded court dockets
juvenile delinquency
ever increasing cost of government education.

We know that billions upon billions of dollars have been spent trying to solve these problems, but year by year the problems grow worse.

pg. 2

The trouble is that we are not addressing the root causes of the problems--the kind of education and training children are receiving.

I can tell you from experience that spending more money will not solve these problems. I can further tell you that the educational establishment is imposing an increasing,excessive burden upon every state in the Union even as we see declining enrollment in public schools.

There is an answer and you have it within your power to change the course of this country by giving parents the freedom to place their children in an educational institution of their choice.

The opportunity is available in every community in this nation for a parent to put his child in a school where he will:

-not be exposed to drugs or alcohol
-where he will be safe from bodily harm
-where he will learn that it was the free enterprise system which made this the greatest country in the world
-where he will learn to do math, to read, write, and speak well
-where he will learn to love and respect his mother, his father, his teacher, his country, and his God
-what is most important is that he will develop a high sense of morality which will remain with him throughout his life
-with this kind of education and training it is highly unlikely that he will ever be a candidate for welfare, food stamps, the psychiatric ward in the hospital, or the state prison.

These are church-schools where the academic achievement is running well ahead of that of the public schools. (See attachments for random test of 1466 students from 30 states on the California Achievement Test showing that the average student achieved 1 year, 6 months above the national average(norm)).

In terms of money, it is now calculated that education costs the government in excess of $2,000.00 per pupil.

Senate Bill 528 would allow a tax credit of up to $300.00 per pupil.

The difference is significant but the real importance of the bill is that the long term benefits are incalculable in terms of elevating the standards of a generation of young people in America.

The Equal Opportunity and Equity Act of 1983 (S.B. 528) may very well be the most significant piece of legislation to be presented to the 98th Congress. I urge that you give it the consideration it deserves.

STATISTICAL SUMMARY

1. The test was administered in September, 1982.
2. The 1977 California Achievement Test was the instrument.*
3. The sampling was as follows:
   a. 67 schools participated.
   b. The schools were selected randomly, by computer.
   c. All schools have used the A.C.E. program for four or more years.
   d. 1,466 students were tested, enrolled in grades 4-12.
   e. 30 states were represented, with a random distribution throughout the U.S.A.
4. The results were obtained by computer scoring (CTB/McGraw Hill).
5. The average student achieved at 1 year, 6 months above the national average (norm).

*The California Achievement Test is a nationally recognized, standardized test. It is the most widely used achievement test in the United States, in both public and private schools.

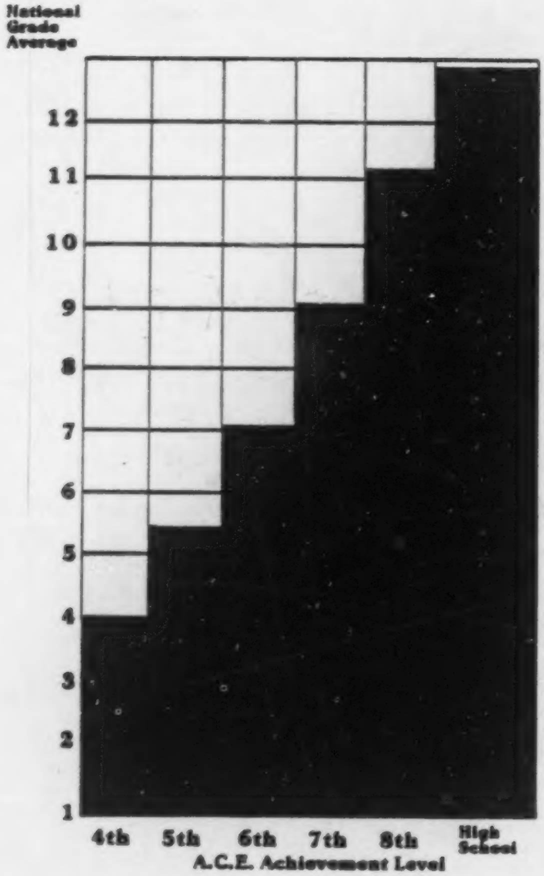
These tests were administered in September, 1982. This means that the students where tested at the beginning of their grade-levels, not the end. For example, a "sixth-grade" child had completed the fifth level of work and had just begun sixth level when the test was administered.

Furthermore, being administered at the beginning of the year, rather than the end, the students were responding after a summer of academic inactivity. Nevertheless, the results speak for themselves.

CALIFORNIA ACHIEVEMENT TESTS

GRADE	READING			SPELLING	LANGUAGE			MATHEMATICS			TOTAL BATTERY	REFERENCE SKILLS
	VOC.	COMP.	TOTAL READING		MECH.	EXP.	TOTAL LANG.	COMP.	CONCEPTS & APPLICATIONS	TOTAL MATH		
High 9th School	12.9	12.9	12.9	12.5	12.9	12.9	12.9	12.5	12.9	12.5	12.9	12.9
8th	11.8	12.9	12.3	12.5	12.9	11.6	12.2	11.0	10.1	10.4	11.1	11.2
7th	10.0	10.0	10.0	9.5	9.6	9.5	9.6	8.0	8.0	8.0	8.7	8.9
6th	8.0	8.0	8.0	8.5	7.2	7.9	7.5	6.6	6.3	6.5	7.1	7.6
5th	6.2	6.0	6.0	5.3	5.6	6.6	6.2	4.7	4.5	4.7	5.4	5.4
4th	4.4	4.5	4.4	3.9	4.3	4.1	4.2	3.4	3.6	3.5	4.0	3.8

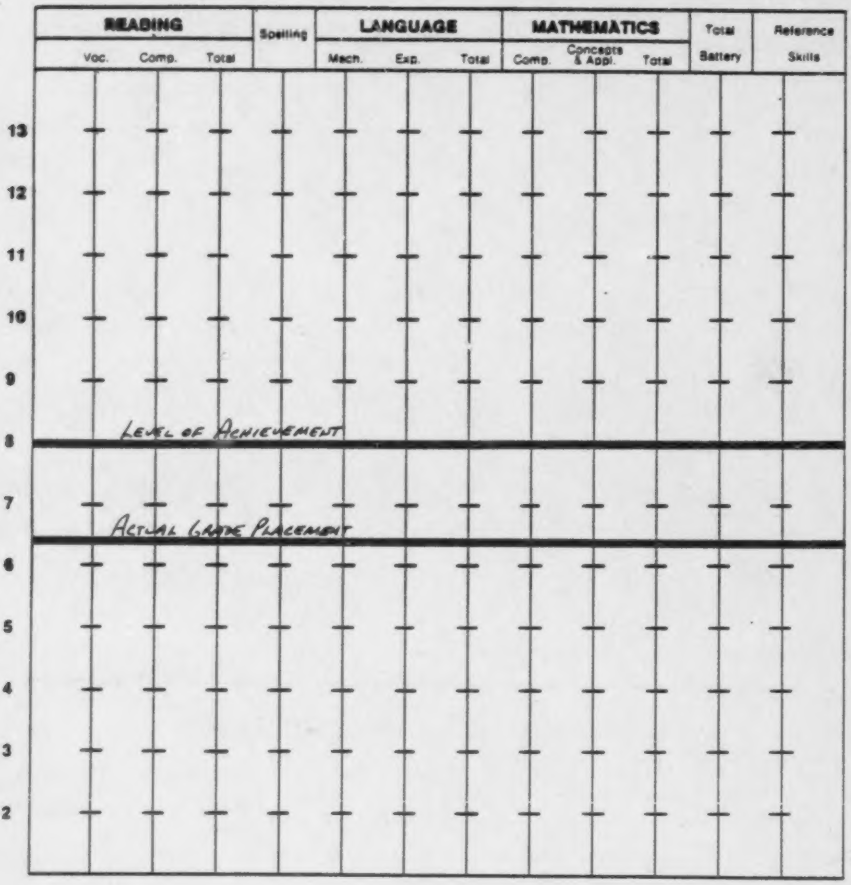
In the A.C.E. Math, computational skills of multiplication and division are presented at a later level (4th & 5th) than conventional courses. Therefore, achievement scores on any standardized test will appear low. However, as the child masters these concepts, the scores will rise dramatically at the 6th level and above.



The shaded area shows the level of achievement for each "grade-level" indicated at the bottom of the graph.

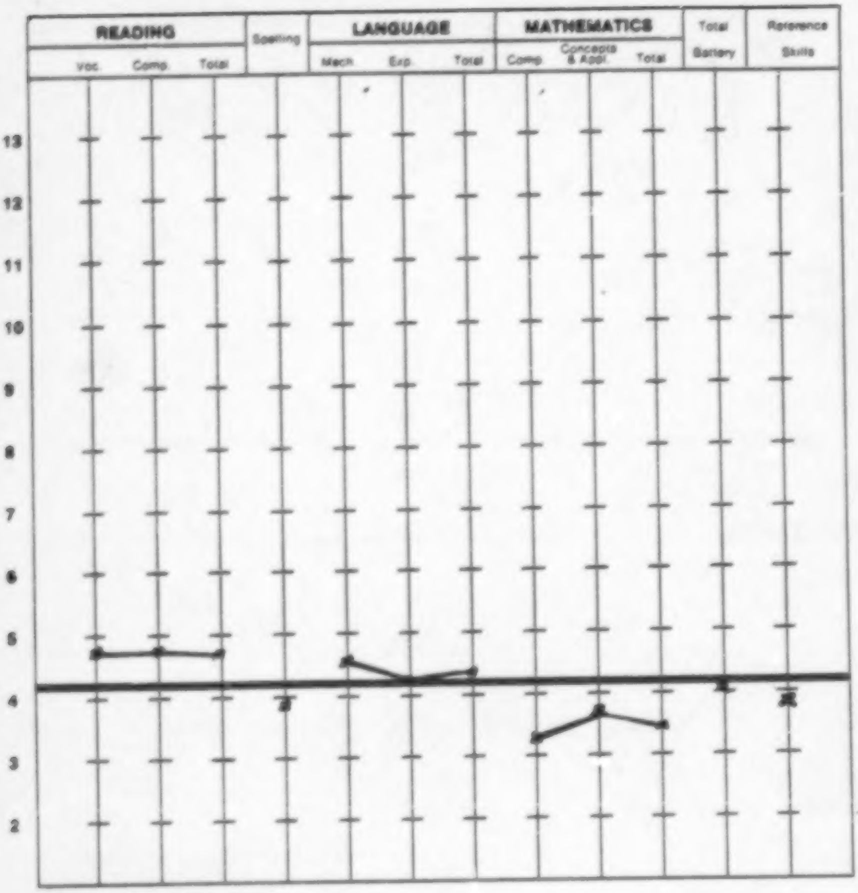
1. Fourth level tested at the national average.
2. Fifth level is four months above national average.
3. Sixth level is slightly more than a year above national average.
4. Seventh level is over two years above national average.
5. Eighth level is over three years above national average.
6. High school students' average, at 12.9, is the maximum score obtainable on this test.

CALIFORNIA ACHIEVEMENT TESTS



Average grade level of students tested: 6.4
Average level of achievement: 8.0
Average student 1.6 years ahead of norm

CALIFORNIA ACHIEVEMENT TESTS

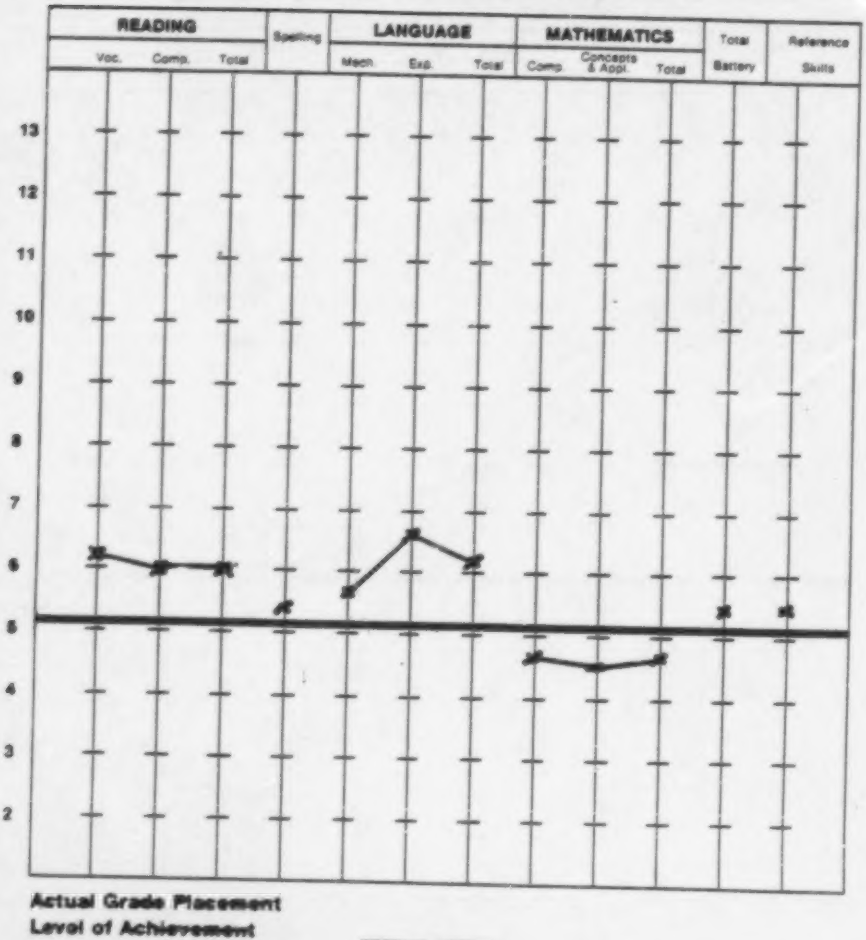


Actual Grade Placement
Level of Achievement

TESTING CRITERIA

1. 1977 California Achievement Test
2. Administered Sept., 1982 (Example: students tested in year 4 had completed only three years of school).
3. 67 schools which had been on A.C.E. program at least 4 yrs.
4. 1468 students who had completed grade levels 3-11.
5. 38 states geographically distrubuted throughout U.S.A.
6. Computer scored by McGraw-Hill.

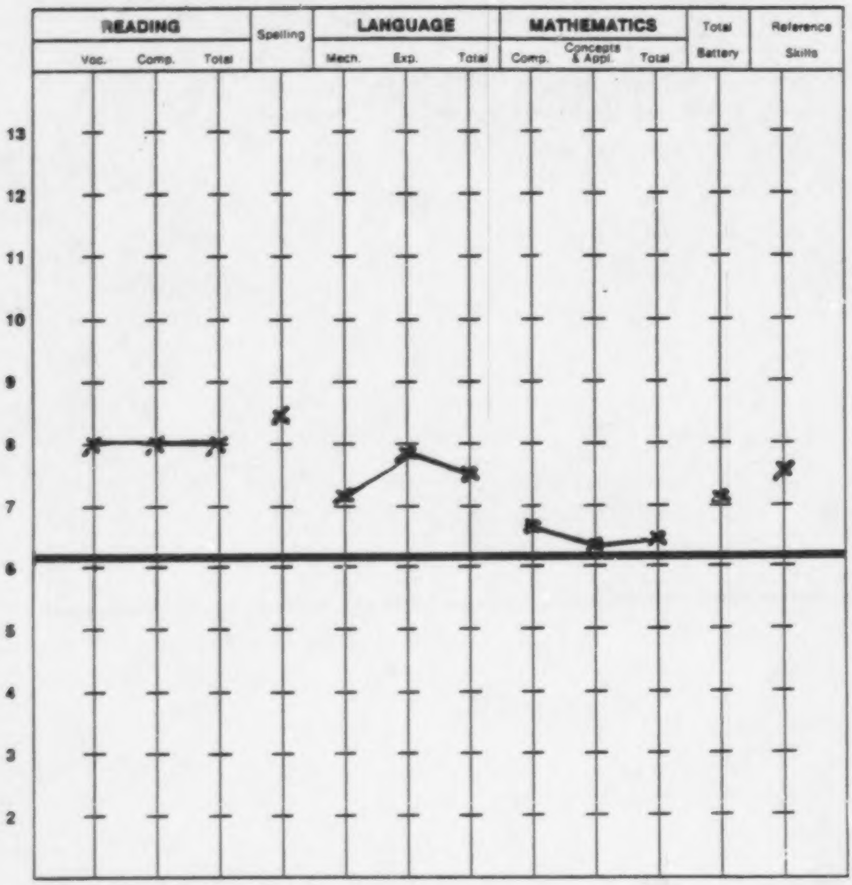
CALIFORNIA ACHIEVEMENT TESTS



TESTING CRITERIA

1. 1977 California Achievement Test
2. Administered Sept., 1982 (Example: students tested in year 4 had completed only three years of school).
3. 67 schools which had been on A.C.E. program at least 4 yrs.
4. 1486 students who had completed grade levels 3-11.
5. 30 states geographically distrubuted throughout U.S.A.
6. Computer scored by McGraw-Hill.

CALIFORNIA ACHIEVEMENT TESTS

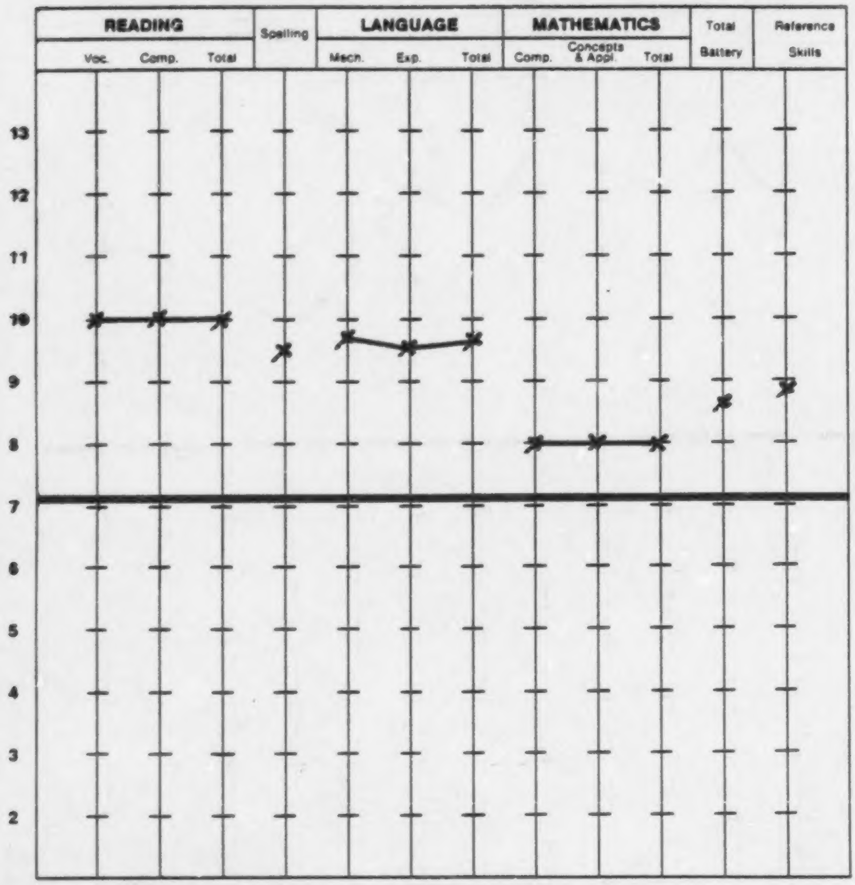


Actual Grade Placement
Level of Achievement

TESTING CRITERIA

1. 1977 California Achievement Test
2. Administered Sept., 1982 (Example: students tested in year 4 had completed only three years of school).
3. 87 schools which had been on A.C.E. program at least 4 yrs.
4. 1466 students who had completed grade levels 3-11.
5. 30 states geographically distrubuted throughout U.S.A.
6. Computer scored by McGraw-Hill.

CALIFORNIA ACHIEVEMENT TESTS



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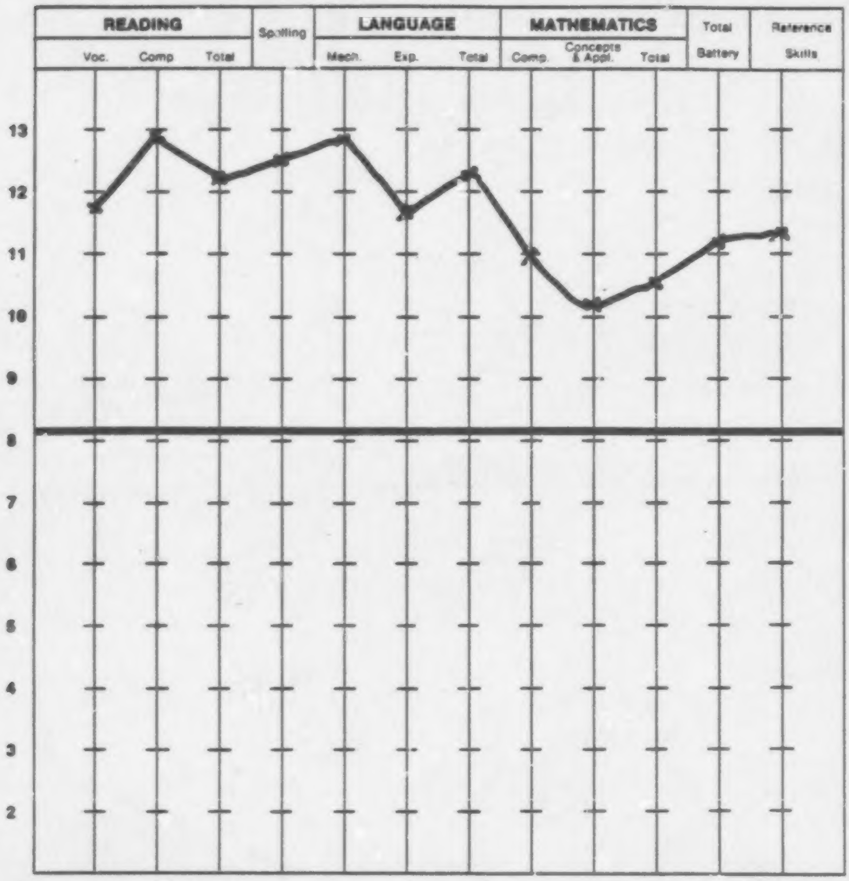

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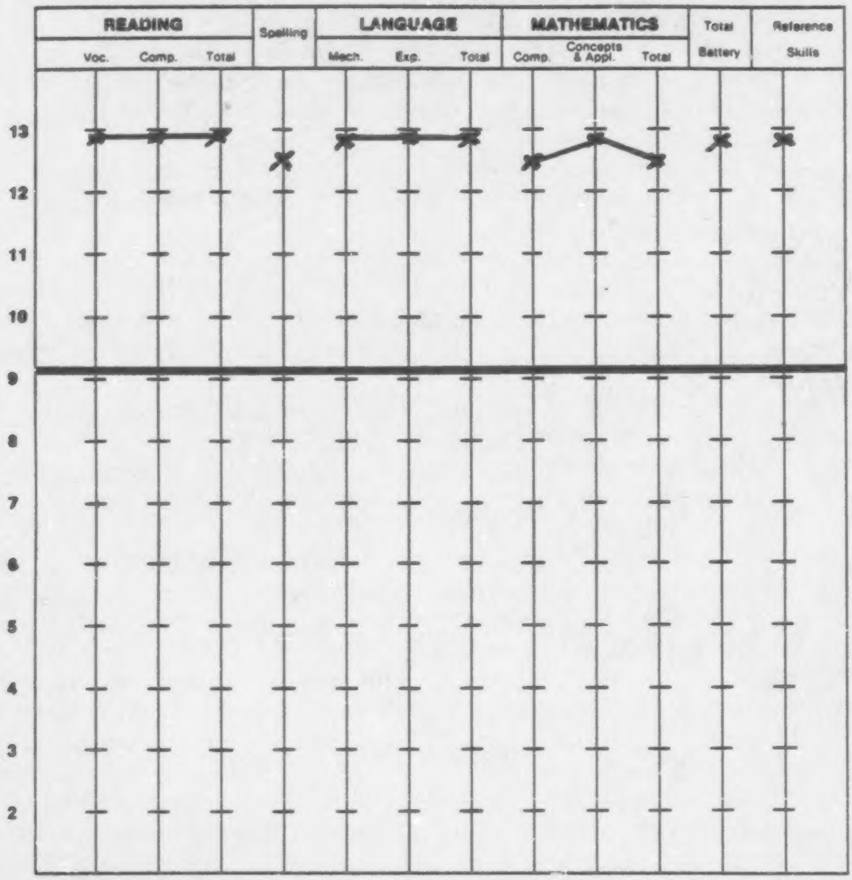

Actual Grade Placement
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4. **1466 students who had completed grade levels 3-11.**
5. **38 states geographically distrubuted throughout U.S.A.**
6. **Computer scored by McGraw-Hill.**

The following are percentiles for each of the levels tested. This indicates the percentage of raw scores in a norm group that fall below a given student's raw score. For example, if a student's percentile rank is 71%, this means that the student scored higher than 71% of the students in the norm group.

In percentile ranking, 50%ile is average. Anything less is below average, anything more is above average. Below are the percentiles for each grade-level.

4th - 50%ile
5th - 57%ile
6th - 78%ile
7th - 80%ile
8th - 86%ile
High School* - 91%ile

*None of the high school students tested had completed more than 11 years of school. Seniors were in the first month of their twelfth year.

As Governor of Indiana, education was given the highest priority in my administration. We poured far more millions of dollars into education than any administration in history, while the quality of education continued to decline.

Now, we are concerned about the 23 million illiterates in this country today, increased costs of welfare payments, illegal use of drugs, excessive use of alcohol, venereal diseases, abortions—1 million last year, suicides—the No. 1 killer of teenagers, runaway children—330,000 last year, overcrowded mental institutions, overcrowded jails, overcrowded court dockets, and the great increase in juvenile delinquency.

We know that billions upon billions have been spent on trying to solve all of these problems, and year after year we find that these problems become worse. The kind of education and training that children are receiving we feel is the root cause of many of these problems in our country today.

I can tell you from experience that spending more money on these problems will not solve them. There is an answer, and you have it within your power to change the course of this country by giving parents the freedom to place their children in educational institutions of their choice.

Now, the opportunity is available in every community in this Nation for a parent to put his child in a school where he will not be exposed to drugs and alcohol, where he will be safe from bodily harm, where he will learn it was a free enterprise system which made this the greatest country in the world. He will learn to do math, to read, to write, and to speak well, where he will learn to love and respect his mother, his father, his teacher, his country, his God, and his U.S. Senators.

What is more important is that he will develop a high sense of morality which will remain with him throughout his life. With this kind of education and training it is highly unlikely that he will ever be a candidate for welfare, food stamps, the psychiatric ward in a hospital, or the State prison.

Now, these church schools where the academic achievement is running well ahead of the public schools are indicated by the report which I have submitted. It was a test of 1,466 random samples, computer samples, from 30 States on the California achievement test, showing that the average student achieved 1 year and 6 months above the national average.

Now, in terms of money, it is calculated that it is costing better than $2,000 a year to teach one pupil. Senate bill 528 would allow at the maximum $300 per pupil. The difference is significant, but the real importance of this bill is the long-term benefits. They are incalculable in terms of elevating the standards of a generation of young people in America.

The Equal Opportunity and Equity Act of 1983 may very well be the most significant piece of legislation to come before the Ninety-eighth Congress, and I urge your serious consideration of this bill.

Senator **Chafee**. Thank you very much, Governor, we appreciate that.

Next we will have Dr. Thomas Vitullo-Martin from New York.

STATEMENT OF DR. THOMAS VITULLO-MARTIN, DIRECTOR OF RESEARCH, METROCONOMY, INC., NEW YORK, N.Y.

Dr. VITULLO-MARTIN. Mr. Chairman, Senator Boren, I would like to ask or request that my prepared testimony be inserted in the record.

Senator CHAFEE. Yes. All of the statements from this panel and all of the witnesses will go into the record, so have no fear on that. And if you can summarize them, it is always helpful to us.

Dr. VITULLO-MARTIN. Then I won't read my statement, but I will just summarize it.

First, I would like to offer a recommendation to the committee, and that is that you work to neutralize the influence on education of taxation policy.

I say that because the net impact of the taxation policy now is damaging both to public and to private education. I think there is a principle of education I would like to announce, that this Nation needs a literate and thoughtful people; it's vital to its being a free democracy. The existing taxation policy is damaging to that, because it makes it more difficult to support education as a whole. It taxes the efforts people make to improve the education of their children and of themselves.

It doesn't do that across the board, by the way; if the education effort is for the purposes of business gains, immediate and mercenary, it is tax deductible. If the education, by the way, were an exercise of religion in itself, it would fall under the existing policy by which we exempt contributions that directly support religious purposes.

The reason it is taxed is that education right now is perceived as some sort of personal service and is not tax deductible.

What I would like to say first is that the taxation on education is relatively recent, that as of 1963, when the Catholic system was quite a bit larger than it is now and dominated, with the Lutherans, the private school sector, there was very little Federal revenue from the efforts of parents to support private education—very little—because there was very little tuition. And of course the tax tables were lower then, and we didn't have this escalation of inflation of income.

Today, however, there is a very substantial diminution by the Federal Government, by the efforts of the Treasury, of the efforts made by the private sector to support private education. I calculate it to be $700 million withdrawn from families that are supporting private schools.

Another thing to say is that the taxing impact on private education is increasing as we sit here, and in 3 years from now, when we can expect that the average let's say secondary and independent school tuition will have gone up another $500, the impact of that $500, the taxation impact, will be that the Federal Treasury will get another $110 extra from those families. And if we calculate that in, then the cost of this tax deduction goes down.

There is another side of the coin, and that is that the Federal Government supports public education through the tax system substantially. I would like to add a different estimate of that amount from what the CRS has presented you: Mr. Larry Uzell of Learning

Inc., has calculated that amount of be $20.2 billion in 1985. That is $517 per public school pupil in 1985. There is a problem with that amount of money, however. It is not evenly distributed. In fact, it is distributed across public schools in the worst possible way—you would not be able to legislate a worse way. It is given disproportionately to families with higher amounts of deductions. If you have a high income school district where the median income is in the range of $50,000 and the marginal rate of taxation for those families averages 50 percent, then the Federal Government will be paying half of the cost of that local education. If you are dealing with the central city where the median tax rate is median, and no one deducts, you might be lucky to get in that central city 10 percent of your local education costs back through the Federal system. The effect of that on school systems is to drive out of central cities to suburban areas—a fact we well know—the wealthiest people. They are bribed out, and they are bribed out by the Federal tax system.

I would recommend to you that you do apply some of the concerns, some of the rules you have been talking about to guarantee civil rights and other measures, to any bill dealing with tax benefits of education expenditures; but I would recommend that you apply them to public schools as well as to private schools, to all of those districts with no minorities, outside of central cities, where you are permitting the total deduction of those education costs. I would recommend that you cut those off to those families if those districts don't meet the standards that you are asking private schools to meet.

I will conclude in one sentence.

I look at central cities, and in central cities it is the school resources available to those cities that are important. The central cities' public and private schools support each other, even if the people who are in public schools think that they are deprived of some money by the presence of the private schools. Parents find communities with many different school resources more desirable than communities with few.

That is what I have to say.

[Dr. Vitullo-Martin's prepared statement follows:]

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The Damage to Education from Federal Taxation Policy

Testimony of Dr. Thomas Vitullo-Martin
Director of Research for Metroconomy, Inc.
Before the Committee on Finance, United States Senate
April 29, 1983

Both sides of the debate over tuition tax credits for private school users appear to assume tht federal tax policy is today neutral toward both private and public schools and that, therefore, a tax credit for private school tuition-payers is a form of aid to private schools that is denied public schools. Following this logic, opponents of tax credits frequently argue that such a preferential policy is either unfair or unwise, and that it encourages the rich to use private schools to separate themselves from the poor, left behind in the pubilc schools. Similarly, opponents fear tax credits will encourage the racial segregation of public schools by making the choice of private schools less costly.

Federal tax policy is neutral neither toward private schools nor public schools. Private schools operated by churches or other not-for-profit organizations are tax-exempt. They are already helped by the tax laws. Contributions to such schools are tax deductible. Tax credit legislation poses no new, unsettled Constitutional questions. The law now permits the direct deduction of contributions to churches for expressly religious purposes; a tax credit (which is essentially similar to a tax deduction) for the payment of tuition to a church school poses no substantially different issue.

We should ask ourselves why the tax law does not permit the deduction of tuition expenses. Present policy considers the instruction provided by tuition-charging schools as a personal service to the recipient; it considers tuition payments as payments for services from which individual recipients benefit and therefore as expenses that cannot be deducted from taxable income. If tuition payments were regarded as contributions in support of religious training, they would be deductible under current tax law. If the recipients of the benefits of the education service were businesses and not individuals, the tuition would be deductible.

The deductibility of tuition has absolutely nothing to do with the degree to which the school reaches a public objective. Indeed, tuition payments for public schools--and many public school districts including the New York City system charge tuitions to out-of-district enrollees--are not deductible. The policy can have some very damaging effects: Black or Hispanic parents who send their children out of district to enroll in white-dominated suburban systems must pay tuition to those systems. And then they must pay taxes on the money they earn for the tuition, despite the fact that they are integrating the suburban school. This tax policy deters--even punishes--their integrating efforts.

Despite the much voiced concern that private schools segregate, the federal government has no programs to aid private schools become more racially or economically heterogeneous. On the contrary, through its taxation policies, the federal government actually punishes those schools attempting to integrate. A private school that decides to reduce or eliminate its charges so that lower-income or minority-families may enroll their children will, all other conditions remaining the same, make up the lost income by charging the rest higher tuitions. As tuitions rise, so do the amount of taxes the federal government collects from the portion of the gross incomes of the tuition-paying families that support the school.

For the simplicity of illustration, consider a two-salary family with an income of $45,000 per year, thus reaching the 50% federal tax bracket. If the scholarship efforts of the private school cost $300 per tuition-paying students, the family would have to devote $600 more of its gross pre-tax income to education than it would if its school offered no scholarships and made no attempts to integrate: $300 will go to the private school to pay the extra tuition to cover the scholarship and $300 will go to the federal government as taxes on that effort. In this case the federal government takes a dollar for every dollar of scholarship support imbedded in the private school's tuition charge.

It is theoretically possible to tie the deductibility of private school tuitions to the racial and economic characteristics of the school, but the approach would be extremely difficult to regulate and would be highly intrusive into the operation of the schools. Alternatively, federal policy could be changed to permit the deduction of all education expenses. I believe this to be the wisest approach, but it suffers a major objection in common with all tax deduction measures for any purpose: The higher a family's income and tax bracket, the more valuable the deduction. Thus a wealthy family paying a $1000 tution will save $500 from its tax liability. A poorer family, for example one at the 10% tax bracket, will save only $100 on its tax liability after paying that same tuition. In fact, the tax system is so constructed that most families at or below median income use the standard deduction, and gain no advantage from the additional deduction of an educational expenditure.

I believe that a thoughtful, and therefore literate and educated people, are vital to our democratic form of government as well as to our economic prosperity. And therefore I believe that a policy that taxes the effort citizens make for education to be an extremely poor one. Expenditures for education should be tax deductible, because they should be encouraged. Against this reasoning are the objections that I have already outlined. They are, at their core, that a pure system of tax deductions is inequitable in its benefits to those with dramatically varying incomes. This inequality is particularly objectionable in the area of educational expenses, because the schools are such an important springboard for mobility and equality in our society. Tax credits are a progressive way of eliminating the objections to a pure system of deduction.

A 50% tax credit up to $300, in effect, equalizes the benefits of tax deductions for families of all incomes except those with incomes so low that they have no tax obligation. (In this case, I urge the Committee to adopt the same rule that applies to U.S. Steel or other companies with investment tax credits in profitless years. Let lower income families accumulate the credits or transfer their benefit to others who can use them.) First, every one--whether or not he or she takes the standard deduction--will benefit from the credit. Second, everyone receives the benefit that only those in the highest tax bracket receive from a tax deduction--a 50% benefit. Third, the limit of $300 on the total amount of the credit means that the benefit to wealthier families is substantially reduced, because the wealthier families tend to pay substantially higher private school tuitions than lower and middle-income families. In addition, the present bill excludes families with incomes above $60,000 from any benefits whatsoever.

These progressive aspects are desirable, but the bill does not go far enough in redressing the imbalance of the federal impact on the choices of schools open to families. Assume a family with an income of $25,000 must pay $1,000 a year tuition to send its child to a church-affiliated school. Assume the family's marginal tax rate is 30%. The family must earn $1428, of which $428 is paid to the federal treasury. Even after the tax credit at its full value, the family is paying the federal government $128 for the privilege of its choice of schools. If the family's income is $50,000 and it is paying $4000 in tuition, then it must earn $8000 and pay $4000 to the treasury for this privilege. If it received the full $300 credit (which it cannot under the present bill), its net payment to the government for its education support efforts would be $3700!

Even with the passage of this bill, the taxation policy of the federal government will continue to make it very difficult for families to support education through tuition payments.

So far as private schools are concerned, this is a new federal policy. In the early 1960s, when the Catholic system had its peak enrollment and, together with the Lutheran schools, accounted for more than 90% of all private schools, the federal government recieved almost no tax income from the money which supported these schools. The schools were supported principally by their parishes, which in turn were supported by contributions. It was only toward the end of the 1960s that these schools turned toward tuition as a principal source of support. Thus only then did the federal government begin to gain much revenue from taxation of elementary and secondary education expenses. In a sense, this bill turns back the clock--to about 1970.

The other half of my concern is that current federal policy is not neutral toward public schools either. If Congress decides against this bill, then I suggest it pass a bill that prohibits the deduction of any expenditures in support of education. That bill would reestablish the balance. Parents would be freer to choose private schools, but central city public schools would not be so seriously damaged as they are by existing policy.

No matter the outcome of your current deliberations, I hope the tax credit debate develops general recognition that the existing taxation policy affecting education strongly aids some public schools and fails to aid others, and that the net effect on public education is to deprive lower-income districts of resources while encouraging the segregation of central city school systems. This effect is the result of a little recognized fact: The local and state taxes that pay for public education are themselves deductible from federal (and state) taxable income. In many suburban districts, as much as 80% of the local taxes go to suport the schools--taxes are little more than a tuition payment. In the case of the private school, the tuition is not deductible. But in the case of the public school, it is. This means that in a high-income school district, where most every family is at the 50% tax bracket, a $4000 cost per pupil will result in a $2000 per pupil reduction in the federal taxes owed by residents of the community. In other words, the federal treasury will foot half the local school costs, because when it permits the deduction of the local taxes that support the public school, it is reducing the amount of money those local taxpayers will owe the federal treasury. And, I cannot resist pointing out, there are no caps on the income of the families who can benefit from these deductions.

The problem is that the benefit is not available to all public school systems, only those where most families are in a high enough tax bracket to itemize their deductions. A city like New York--where 90% of the families use the standard deduction--gains very little from this provision of the tax law. This, in turn, means that it is much easier for a high-income suburban district to increase its education budget than it is for New York City, because the federal government helps the high income district more than New York. Public school systems receive more money from the federal treasury from the deductibility of local taxes than they do through the actual grant programs of the Department of Education. Larry Uzzel, of Learn, Inc., calculates the amount to be $20.2 billion by 1985, or an average of $517 per public elementary and secondary school student.

Most of that money goes to wealthier districts. The net effect of federal taxation policy on schools is to aid wealthier districts far more than the poorer ones, even after the distribution of federal grants is calculated, and that only encourages the flight of the middle and upper income families from these poorer districts.

And we are now full circle. It is not unfair to give private schools tax credits (a progressive alternative to tax deductions), because public school users now recieve enormous benefits from the tax deductions of their education expenses (i.e. their tax payments in support of their local schools.) The unfairness rests in the fact that the existing system gives extraordinary benefits only to the wealthiest and least integrated public school districts and very little to medium- and lower-income districts. Tax credits are designed to aid low- and middle-income families disproportionately, and this will have the effect of stemming the flow of such families from central cities to the exclusive and attractive--because so heavily subsidized--public school havens. That in turn, will aid urban pubilc schools, because it will make their cities stronger.

Further Information

I present in greater detail the argument that present taxation policy is damaging public systems as well as handicapping the private schools and limiting their integrating effect in an article in the City Almanac, which I have attached to this testimony.

A much more detailed discussion of the damaging effects current taxation policy has on the ability of private schools to offer scholarships to lower-income and minority-families for the purpose of integration can be found in: Tuition Reform For Private Schools: The Manhattan Country School Plan (with Frank Roosevelt), (New York: Manhatan Country School, 1981). This publication, supported by a grant from the Ford Foundation, is available from the school at 6 E. 96th Street, New York, New York 10029.

In this article, I cite calculations of the cost to the federal government of tax deduction of public school expenses. These calculations are also appended to this testimony in the form of the report from: Larry Uzzel, Issue Brief: Tuition Tax Credits, (Washington, D.C.: Learn, Inc., September 1982).

CENTER FOR
NEW YORK CITY
AFFAIRS

NS

City Almanac

Vol. 13, No. 4 December 1978

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Conventional wisdom suggests that private schools are elitist and do not do not benefit the community as a whole—not to mention its public schools. Indeed, as recently evidenced, when a public official supports private schools, even to the extent of proposing tax credits for tuitions paid by parents, he incurs the wrath of "liberals."

Marshaling evidence from around the country as well as from New York City, Dr. Thomas Vitullo-Martin sharply questions this traditional view. Further, he suggests that its private schools may be one of the city's most potent weapons in stemming the flight of the middle class to the suburbs and the continued erosion of the city's economic base.

Many families, dissatisfied with the city's public schools, may be well off enough to buy a suburban home in order to send their children to a public school there. But they may not be able to afford the taxable dollars required to remain in the city and send their children to comparable private schools. In this regard, Dr. Vitullo-Martin probes fresh ground by unraveling the way the federal income tax codes, in effect, subsidize suburban public education without giving an equitable benefit to parents who opt to stay in the city and use private schools.

The author's argument merits the attention of those who are concerned with and responsible for the city's socioeconomic well-being.

Henry Cohen, *Dean*
Center for New York City Affairs

Jac Friedgut, *Editor*
City Almanac

New York City's Interest in Reform of Tax Treatment of School Expenses

Retaining the Middle Class in the City

Thomas Vitullo-Martin

It's not news that New York City is losing its white middle class. What is surprising is how the loss is tied so tightly to school-age children. Between 1970 and 1975, New York City lost 15.3% of its total of intact white families with children under 18, a loss of more than 15,000 families per year, according to the Foundation for Child Development (FCD).[1]

Some of this change is the result of forces beyond the city's control—reduced rate of family formation and reduced birth rate among whites and an increase in the number of single-parent families. But roughly 60% of this loss, 9,000 families per year, comes from white families moving out of the city.[2] More families flee to the suburbs when their children are five to fourteen years old, says a study for the Council of Great City Schools. These moves hurt the city. "The decision about where to live by parents in their late twenties and early thirties will . . . continue to be a prime determinant of the racial and socioeconomic composition of the central cities and suburbs."[3] In New York City, while children form a larger portion of all under-six-year-olds than they do of any other age group because as many white children reach school age their families leave the city.[4]

The FCD data show an astonishing difference in median income between New York City families with children and those without. Those with children had a median income of $11,912 in 1975; childless families had a median income of $15,453. New Yorkers with children had a lower income than their national counterparts; those without children, a higher income.[5] The implications of the data seem pretty clear: More affluent New Yorkers with children leave the city when their children reach school age.

The exodus to the suburbs is skewing the city's racial makeup and weakening its tax base. Today, 89% of all minorities living in the New York City metropolitan area live in the city itself.[6] The flight of the wealthier white families has left the city with a school-age population in which one of every four children comes from a family with an income below the poverty level.

New York City was not alone in losing white families. Between 1960 and 1970, central cities in the Northeast lost 16.2% of their white families to the suburbs, almost twice the national rate. University of Wisconsin sociologist William Frey argues that "the most damaging aspect of this flight, from the perspective of a city's economic viability, is not the out-movement of whites per se, but the loss of the city's upper-status, high-income population—a subgroup which tends to be overwhelmingly white."[7] In the older Northeast cities Frey studied, between

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Summary

New York City has a strong interest in reform of the way federal income tax codes treat education expenses. For years, city officials have known that the middle-class exodus weakening the city's tax base is, to a great extent, attributable to the high quality of suburban public schools.

The city's answer has been to try to improve its own public schools, but massive reform is always slow, too slow to effect current outmigration. This solution also ignores an important aspect of the middle class's flight to the suburbs: tax advantages. In the wealthier suburbs, middle- and upper-income families not only get higher quality education for their children, they pay less for it.

The federal tax codes allow individuals to deduct from their taxable income local taxes that support public education—but not tuition to public or private schools. State and local income tax laws generally follow federal rules. The deduction of a local tax from federally taxable income is, in effect, a federal subsidy of the local tax.

If a family is in the 50% federal tax bracket, the net increase in its total tax obligation of a $3,000 rise in property taxes is only $1,500—only $1,240 if we take into account the effects of state and city income taxes. The local government raises its revenue by $3,000, but the federal government simultaneously decreases its revenue by $1,175. Any tax deduction is, of course, worth more to a high-income family than to one with a low income. The aggregate effect of the tax deduction system on a high-income community is that the federal and state governments pay a higher percentage of the community's tax obligation—up to 70% of local taxes in some New York suburbs compared with less than 15% of city taxes.

One social effect of this regressive tax provision is to drive high-bracket taxpayers from the city. These citizens need little in the way of public services; they provide most of their own needs from their own resources. One thing they do need, however, and something they find in the suburbs, is quality education. Local suburban districts commonly concentrate as much as 80% of their tax revenues on support of their schools. Local taxes, in effect, are little more than tuition to these exclusive public schools. And this "tuition" is made much less costly to the families in the district because they can deduct it from their taxable income.

In contrast, New York City, which must handle massive and more diverse social problems than the suburban governments, can spend less of its tax revenues on public schools—about 20% of its income from local taxes. And city schools must address a much broader range of more difficult education problems than the suburban schools. The tax system exacerbates the situation because the aggregate value of the federal subsidy of New York City schools through the tax deduction is much lower. In essence, suburban public schools can concentrate more on the needs of upper-income families, and the federal and state tax systems make it easier for the suburbs to pay for these schools.

New York City does have schools that compete with high-quality suburban schools in attracting middle and upper-income families: private schools. But because the tax system does not permit families to deduct tuition payments, private schools are farther out of reach for city families than the schools' tuitions would suggest.

A New York City family with $45,000 taxable income and two children in independent private schools (an average $8,000 per year expense) must allocate about $24,000 of gross taxable income to meet those education expenses. The 14 years of nursery, elementary, and secondary schools will cost the family more than $336,000 of its earnings. The family's alternative would be to move to a suburb with public schools of comparable quality and put that $336,000 into a house or other capital investment. The combination of disproportionate tax benefits for the public education expenses of wealthy suburbs and the substantial tax disadvantages of using private schools in the city drives out middle- and upper-income families.

The elimination of the tax deductability of local taxes is not a popular proposal and would be difficult for the city to promote at the federal level. In addition, the change would create some problems for the city. Federal coffers would take in a lot more money, but the city wouldn't necessarily *get* more of it. Eliminating the deductability of local taxes is politically risky and probably out of reach. But providing for the deduction of school tuitions would benefit the city—and that measure is *within* reach.

The major objections to such a change in the tax laws have centered on the presumed elitist, segregationist appeal of private schools. Enrollment data, however, show private school students to be quite similar socioeconomically to those in the public schools. In some sections of the country private schools enroll even higher percentages of minorities than public schools. And private schools serving the highest-income clients enroll higher percentages of minority and low- and moderate-income students than public schools with similar clients—principally because they offer scholarship aid, which public schools do not.

Objections also center on the economic and political impact of private school enrollments on public schools. A careful review shows that the central city public schools will have more resources for fewer students as a result of increased private school enrollment. The city's private schools are valuable social and economic resources, and have the reputation of delivering the highest quality education to inner-city students in particular. Present tax laws damage them and the city.

1965 and 1970, 30%-40% of high-status whites had moved to the suburbs.

Frey's analysis of the causes of their flight showed that the highest-status, highest-income families were motivated particularly by relatively higher levels of per pupil expenditures in suburban school districts. Either these families put more emphasis on education than lower-status, lower-income families, or their high income gave them the means to move in the pursuit of better quality education for their children.

In a similar study, Janet Pack uncovered an additional factor motivating high-status families to relocate. Along with education, Pack found tax considerations of particular importance in the family's decision to leave the central city.[8] Pack's research concerned property taxes, which are much less important to most families than state and federal income taxes. We shall explore how these taxes affect the decisions of higher-income families to remain in or leave the city.

White Flight and Income Taxes

Most commentators on white middle-class migration from city to suburb have ignored the Internal Revenue Codes as a factor. They have preferred to blame the exodus on the generally poor quality of city public schools. There is reason to believe that even if these schools offered an education equivalent to that in the most exclusive suburban public schools, migration from the city would still be similar to what we see today simply because the migration pattern is so heavily reinforced by the federal tax codes.

The tax codes influence family relocation decisions. The average American family relocates every five years. The quality of local schools, housing amenities, relative costs of the new house, other community services and amenities, and the tax effects of the relocation all play a role in the family's choice of a new residential location. It is consistent with Frey's data (although he himself does not argue the point) that the higher the family income, the more significant are tax considerations in the choice of a new location.

When commentators hold city schools responsible for the large-scale exodus of white, middle-class families, they assume that these families cannot find city schools equivalent to those in the suburbs. But this is simply not true. Parents seeking quality education for their children can find it in the city's private schools, whose quality is at least the equivalent of that in suburban public schools. The existence of quality private schools thus should encourage wealthier families to remain in the city. But because the tax system massively penalizes upper- and middle-class families using these schools, it limits private schools' ability to hold these families in the city.

According to the U.S. Department of Labor, a family of four at the "higher level" standard of living in the New York City area required an income of $34,252 in 1978. The amount would be higher in the city proper, putting the city family in the 50% federal tax bracket. To give their children an education equivalent to that of the best suburban public schools, these families would have to use private schools in the city. But private school tuition and related expenses are not tax deductible. In the 50% bracket, a family must earn two dollars to pay for every dollar it spends to send its children to a private school.

The family's alternative is a "free" public school education in the suburbs. It does pay something extra for quality suburban public schools in the higher price tag and property taxes on a home in a desirable school district. Both these costs are moderated, however, by associated federal income tax deductions.

By far the most important factor that virtually forces middle- and upper-income families to leave the city is the combination of the substantial tax benefits given those who use the free suburban public schools and the huge tax disincentives attached to using urban private schools.

The issue here is not equity. No one could seriously argue that it is unfair for affluent families to pay more than poor families to obtain a good education for their children. Rather, the concerns are what family choices do the tax and education systems encourage, and what are the social effects of those choices? The tax system encourages upper-income and middle-income families to leave the city for the suburbs, where their children can attend free public schools that are the academic equivalents of urban private schools; the system thereby encourages these families to take a substantial public subsidy for their education expenses. In the end, we will see there is a serious question of equity in this issue: By way of the tax system alone, the federal government gives many times more aid to wealthy suburban families than it gives poorer urban families through all federal education programs *and* the tax system.

This essay attempts to clarify New York City's interest in tax reforms that would remove some of the incentives for upper- and middle-income white families to leave the city. The argument is complicated, first, because it centers on the incentive and disincentive effects of deductions from taxable personal income. (Trying to understand how tax deductions affect social behavior is a little like trying to see the photographic print in the negative.) Second, tax reforms discussed here would alter the calculations parents make in choosing private or public schools. Therefore, a discussion of these tax reforms necessarily involves consideration of the city's private schools, especially their racial and economic composition, and of the social policies advanced or retarded by encouraging upper-, middle-, or lower-income families to use the private schools.

The tax system's present treatment of education expenses puts the city at a dis-

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advantage. Private schools in the city ameliorate the disadvantage, and tax reforms would further reduce—if not eliminate—it. Ultimately, the argument rests on the conviction that increasing the resources committed to education within New York City and retaining for the city more of the resources its citizens spend on schools—instead of allowing them to be frittered off to Washington—greatly benefits the city, its economy, its public schools, and all its residents whatever their income.

How Taxes Influence Behavior

From its original use as a simple revenue-raising device, the federal income tax system has become a means of changing behavior. Initially, the system was directed at altering purely economic decisions. It gave incentives to families financing their own homes, to wealthy individuals investing in municipal bonds, to businesses making capital investments in new equipment, and so on. Current tax laws also give incentives to businesses to educate their employees. Businesses can deduct expenses for the education of their employees if the education is related to the improvement of the employees' job skills. Nonbusiness-related education expenses, however, are not deductible.

In drawing up these tax rules, Congress appears to have focused only on economic considerations. But tax rules have social as well as economic effects. The tax treatment of education expenses has social impacts that have been ignored—to New York City's detriment—and should be examined.

Although families do not choose schools in the strict, economically rational fashion that investors choose bonds, a change in tax policy will still normally affect a family's education decisions. The higher the family's income, the higher its tax bracket, the more valuable the tax deductions, and the more likely the family will be influenced by tax policy. Suburbs offer several tax-related attractions to the higher-income family, all of which are enhanced by current federal tax codes.

In contrast to New York City, the typical affluent suburb has a wealthier tax base, fewer children per household, and, therefore, lower education expenses per household. The suburb can spend substantially more per pupil and still keep taxes relatively low because upper-income families seek few other public services. These families are able to provide more of what they need themselves; they live in low-density areas that require low capital investment and lower public service expenses. Local suburban governments principally provide the public services that wealthy families need and avoid the expense of those services used predominantly by lower-income families, such as welfare, parks, public transportation, and the like.

Central cities provide all these services and more. Wealthy families in the city must pay for such services even though they may make only minimal use of them. For upper-income families, then, suburbs are more efficient: They charge taxes for and deliver only those services needed by their wealthy residents. In the suburbs, affluent families bear little of the burden of caring for the poor, which they would have to do if they lived in the city.

The federal tax codes enhance this natural advantage of the suburbs, by permitting wealthy families to deduct local taxes from their federally taxable income. This deduction is, in effect, a subsidy to the affluent suburb by the federal government because the federal government forgoes a part of the taxpayer's normal tax obligation whenever the local government raises taxes. The significance of the deduction of local taxes is much greater in the affluent suburb, where most families are in high tax brackets, than it is in the central city, where most are in relatively low tax brackets. The proportion of the local budget refunded by the federal government through tax deductions of local taxes is therefore greater in affluent jurisdictions than in low-income suburbs or the central city.

Thus, it is doubly easy for the affluent suburb to raise its taxes and increase local revenues because (1) any given amount of tax revenue represents a smaller proportion of average family income in the affluent suburb than it does in the poorer central city ($2,500 property tax is a greater proportion of a city family's $15,000 annual income than of a suburbanite's $50,000 income); and (2) the federal government refunds a greater proportion of local taxes to the wealthy than to the poor.

A local government's increase of property taxes by $5,000 per year changes the tax liability of a family in the 50% bracket by only $2,500. It changes the tax liability of a family in the 15% bracket by $4,250. If a school district's taxpayers are all in high tax brackets, we can expect to find as much as 50% of local public expenses subsidized by the federal government through the tax system. And state and local income tax systems increase this amount of governmental subsidy. In New York City and any areas with more mixed populations, the federal government provides a subsidy through deductions on personal income of only about 15%.

The city's situation is even worse than it seems. The federal government provides a 15% subsidy of city taxes only *in theory*. Families at New York's median family income level normally use the federal standard deduction and do not itemize expenses. Thus, if the city raises its taxes $1,000 per family in order to improve the public schools, most families would have to pay $1,000 out of pocket—because they do not itemize. In wealthy suburbs, in contrast, the average family would be out of pocket only $250 to $500. The federal tax codes reduce the tax increase to high-income families in the wealthy suburbs by 50% or more but do not reduce the cost to lower-income families at all. (The state and city income tax codes follow suit and increase the advantage of the wealthy family.) It is, therefore, much more difficult for central cities than for wealthy suburbs to raise taxes *because of the federal tax provisions.*[9]

Tax Deductions as a Form of Public School Aid

Let us examine this reasoning in greater detail: (1) the entire operating expense of local government—including local schools—is raised by state and local taxes and is deductible from personal income subject to federal taxation; (2) this deduction is, in effect, a federal subsidy of local expenditures; (3) in places where the average family income is relatively high, the average tax bracket is higher, and consequently, the value of the average deduction is greater; (4) as a result, affluent suburbs receive a far greater per capita subsidy from the federal government than do central cities, and this federal aid covers a far greater proportion of all local expenditures in these wealthy areas; (5) public school aid through the tax system far exceeds direct programmatic aid the federal government gives to support education.

In 1978, state and local governments raised about $90 billion to support the operations of their public schools. The federal government refunded, through tax deductions, $20 billion or more of this cost—almost three times the direct federal education budget of about $7 billion for all programs. Although the direct programmatic budget is modestly skewed to aid lower-income areas, the refund program is much more heavily skewed in the opposite direction. The net effect of federal intervention in education is to subsidize the wealthiest families in the wealthiest districts far more than the central cities and their residents.

For example, Pocantico Hills, N.Y., which operates only elementary schools, spent $9,080 per pupil in 1977-78, compared with New York City's approximately $2,700 per pupil. The median income in Pocantico Hills was twice that of New York City in 1970, and the difference has probably increased since then. The federal government gives Pocantico Hills almost seven times as much aid per pupil as it gives New York City (see box, "Pocantico Hills and New York City: How Federal Education Aid Works"). So Pocantico Hills is quite attractive to anyone who can afford to move into the district, and it will attract the wealthiest families from the city.

Tax Disincentives for Using Private Schools

The tax system, with all its consequent disadvantages for central cities, drives wealthier families from the city

New York City and Pocantico Hills: How Federal Education Aid Works

Substantial federal aid comes to local schools districts through the income tax system, but some districts benefit more than others from this form of federal support. Income tax data are not reported for communities, so we are forced to make some assumptions about the tax brackets of the average taxpayers in New York City and Pocantico Hills in order to estimate the comparative value of federal aid to these cities through deductions of local taxes that support their schools.

To determine the effect of federal tax aid on the public schools, we must first determine the portion of per pupil expenditure in the school system raised through taxes at the local and state levels because only this portion of the school bill becomes a deduction from the income tax obligations of the school district's residents. Federal aid to the district is not paid for out of local taxes and, therefore, is not a deduction from federal tax obligation. To calculate the actual federal tax aid to a district, we must subtract the value of federal education aid to the district from its per pupil expenditure.

We must next determine the average tax bracket of the school district's residents, since the value of the deduction of local school taxes is equal to the taxpayer's tax bracket. For example, if a taxpayer is in the 25% bracket, an increase in local school taxes of $1,000 means a reduction of federal taxes by a little more than $250. The taxpayer has to come up with 75% of the new taxes because the federal government, in effect, shares the cost of the taxation by lowering its own tax bill. If the taxpayer falls into the 50% bracket, his or her federal taxes are reduced by a little more than $500.

State and local income taxes follow the federal regulations on these deductions, so the amount of local school taxes paid for through tax deductions is correspondingly greater. For those in the 50% tax bracket who live in New York State and work in New York City, the deduction is worth almost 70% of the local tax obligation. In other words, when a local government increases taxes by $1,000, these high-bracket taxpayers pay only $300 in additional taxes. The other $700 that comes to the local system is, in effect, a transfer payment from local, state, and federal governments to the taxpayer's school system.

Let us look at the effects of the deduction system on two districts—New York City, whose population is at about the national average tax bracket, and Pocantico Hills, a high-income, high-spending school district in Westchester County. We can calculate the average tax bracket of a resident of the two districts by relating it to median family income as determined by census bureau surveys. If we multiply the median tax bracket by each community's per pupil expenditure, less federal programmatic aid, we have a reasonable estimate of the per pupil federal aid to each district through the operation of the tax system.

- **New York City.** Median family income in 1975 was $13,459. The corresponding combined federal, state, and local tax bracket, after the standard deduction, is 16%.

Per pupil expenditure less federal programmatic aid equals:

($2.9 billion - $0.3 billion) ÷ 1,033,813 students = $2,500.

Federal, state, and local tax aid to the school system equals:

$2,500 x 16% = $400 per pupil.

However, those taking a standard deduction do not itemize local taxes; thus, the city does not get any additional tax benefit when it increases taxes to support the school system.

- **Pocantico Hills.** Median family income is estimated, on the basis of the 1970 census, to be $40,000. The combined federal, state, and local income tax bracket would be approximately 64%.

Per pupil expenditure less federal programmatic aid equals:

($3,449,699 - $788) ÷ 380 students = $9,076.

Federal, state, and local tax aid to the school system equals:

$9,076 x 64% = $5,809.

Through the tax system, Pocantico Hills receives *15 times* more aid per pupil than New York City.

to suburbs where residents have high median incomes. One cure for the problem would be, as President Carter suggested in his first tax reform message, to eliminate the deduction for local property taxes from federal tax returns, thus reducing the tax advantage of the suburbs. Such a reform would make support of suburban schools much more difficult and would encourage families to remain in or move back to the central city. But the move would also be likely to have the net effect of reducing local investment in education, and it would force greater reliance on federal and state governments to finance schools, which is not necessarily a desirable change or one likely to benefit cities.

What is the solution for the cities? Some suggest that sufficient money put into New York City's public schools could make them more attractive than suburban schools. That solution does not appear practical principally because (1) the change would take too long to have the desired effect; (2) no one knows how much more money would be necessary (the system's budget has more than doubled since 1970, while its student population has declined by about 14%, with no noticeable improvement in the system's reputation for quality); and (3) the city would not be able to increase education spending without increasing spending for other city services during the fiscal crisis. Certainly the improvement of the city's public schools—especially to regain their reputation as superior to the best private schools—should be pursued. But right now private schools attract and retain middle- and upper-income families in the city. Their continued presence in New York will determine the future racial and economic makeup of its population. The city can take steps to enhance the effectiveness of these schools, by working for changes in the federal tax system—changes that could actually increase the city's revenues.

Upper-income New Yorkers are most likely to enroll their children in religiously affiliated or independent private schools, schools that charge high tuitions because they are not supported by a church, foundation, or other outside source. Tuitions range from $2,000 per year to $6,000, with an average charge of about $3,000. In addition, parents must bear the cost of school bus transportation and other fees and services normally borne by suburban governments or public school systems. The present tax system effectively doubles and triples these costs.

The amount of the penalty the tax system imposes is a function of the federal, state, and local income tax brackets into which the family's income falls. These, of course, vary with income. Current representative federal tax brackets for a married couple filing jointly are as follows:

Taxable Income (in thousands)	**Tax Bracket**
$ 8-12	22%
16-20	28
24-28	36
32-36	42
40-44	48
52-64	53
76-88	58
100-120	62
140-160	66
180-200	69

As a rule, state and city taxes average one-third of federal taxes. For the sake of clarity, let us take an extreme example, that of a family with a very high income. The line of argument, however, applies to all tax levels.

A New York City family with a taxable income of $45,000 is in the 50% federal tax bracket. In addition, it is at approximately the 17% state and local bracket. After paying taxes ($14,700 federal and $5,500 state and local) the family has $24,800 remaining to pay nondeductible living expenses, such as food, clothing, rent, and tuition to private schools. Tuition and related education expenses for two children in private schools in the city would average about $8,000 per year, approximately one-third the family's after-tax income, leaving it with $16,800 for other expenses. Clearly, using private schools requires a deep commitment to living in the city, since the public schools in the suburbs, as an alternative, often have a reputation for comparable quality.

If education expenses were deductible, as they would be if they were simply business expenses or religious contributions, the impact on the family would be quite different. An $8,000 deduction from a taxable income of $45,000 would bring the family down two tax brackets. It would pay $10,800 federal and $4,200 state and local taxes on its $37,000 taxable income. After all taxes and education expenses were paid, the family would be left with $22,000, or $5,200 more than it has today, without the tax deduction, for other expenses. The effect of a tax deduction of education expenses on this family would be to reduce the cost of private education by 65%.

Consider once again, but from a different angle, the present situation in which education expenses cannot be deducted. How much must the upper-income family earn in order to pay $8,000 per year in private education expenses? In its tax bracket, it would have to earn $24,000 in order to cover the $8,000 private-school expenditure (assuming the $24,000 income is "earned income" and subject to a maximum federal tax of 50% and corresponding maximum state taxes). The federal, state, and local governments would be taking $2 for every $1 the family spent to educate its children in private school.

Our examples have substantially understated the economic incentive for the family to move from the city. The commitment to a private school is not a one-year commitment, but stretches out over 12 to 15 years of nursery, elementary, and high school. Tax consultants estimate the out-of-pocket expenses of a family using only private schools to be in the range of $40,000 to $60,000 per child, or $120,000 to $180,000 of pretax, earned income —if the education expenses cannot be deducted. If it remained in the city, the family with two children would have to spend $250,000 to $333,000 of its earnings for education in private schools.

At present, the alternatives are remarkably attractive. This same family could move to an exclusive suburban school district, invest in a home—a capital investment—the money it would have spent on private schools in the city. The home investment would produce tax deductions that allow the family to shelter a substantial portion of the $250,000 to $300,000 it has to invest over the 15 years or so its children are in public schools. And the family may find its suburban home appreciates in value in that time.

In the suburb, the family can enroll both children in public schools, paying only the taxes on its property. Property taxes are a function of local tax rates and of the assessed value of the property and so cannot readily be projected. Let us assume that the family pays $3,000 per year in property taxes. Of this, 60% to 80% would be assignable to the costs of the public schools, or about $2,400 for both children. This amount would be deductible from the family's taxable income, lowering its tax bracket and saving it about $1,600 in taxes. Thus, the real cost to the family of the suburban public school education would be about $800, or $400 per child.

In summary, under the present tax system, the family must spend $24,000 of its gross income to remain in the city and use private schools, or $800 of gross income (which is the additional tax obligation the family must meet in the suburbs, after federal deductions are accounted) in the suburban public system.

Thus, the tax system has two notable damaging effects. It makes it almost certain that a family would choose suburban public schools over the city's private ones. If the family does opt for the suburbs, that choice also removes from circulation in the city's economy about two times the amount of money a resident family would pay to support private education for its children.

Tax Reform and the First Amendment

One block to careful consideration of reform of the tax rules on education expenses is the assumption that such a reform tries to skirt the First Amendment's prohibition of establishment of religion. During the tuition tax credit debate last summer, this objection drew so much publicity that the actual impact of the proposed tax credits never really received careful attention. Opponents' use of a First Amendment argument stems from their confusing a taxation bill—which the tax credit proposal was—with a programmatic aid bill. The two are substantially different things.

It is the settled practice of Congress to exempt religious organizations from federal taxation, to permit states to exempt them from state taxes, and to allow individuals to deduct religious and other charitable contributions in calculating their taxable income. Until the early 1960s, the IRS allowed parents to deduct "tuitions" to religious schools. Up to that time, 80% of all private schools were tuition-free, that is, they were denominational schools supported by contributions to the church or synagogue. The deductability of these contributions was an accepted practice and did not raise First Amendment problems.

But in the 1960s—ironically, to become eligible for federal funds—most religiously supported schools began to open their doors to students who were not, and whose families were not, church members. In a sense, these schools became more secular. And since they were accepting students whose parents were not church members, and, thus, not contributing to the parish, they began to charge tuitions. The IRS then ruled that these tuitions (as payments for services rendered) are not tax deductible.

As a practical matter, the federal government let parents deduct "tuitions" to religiously affiliated schools until the mid-1960s, when the churches began to limit their contributions to the schools and the schools began to charge tuition. Only then did the IRS prohibit the deductions. Any reform of the tax treatment of education expenses that includes religiously affiliated schools—as the tuition tax credits did—simply restores the situation that existed prior to about 1963.

The Tuition Tax Credit Debate

Any change in the federal tax treatment of education expenses will rouse the same objections that surfaced in last summer's congressional debate over tuition tax credits. Any tax reform that removes some disadvantages private schools suffer under the revenue codes touches an ideological nerve in many Americans. Aside from First Amendment arguments (see box, "Tax Reform and the First Amendment"), the principal objections voiced during the debate on tax credits centered on opponents' concern that private schools are elitist and segregationist and succeed at the expense of public schools.

After reviewing the debate and the principal arguments of the tax credit opponents, we will examine the present role of private schools—throughout the nation and in New York City—to see if the schools bear out the fears expressed by the tax credit opposition.

TABLE 1: BENEFITS OF PROPOSED TAX CREDIT TO FAMILIES PAYING PRIVATE SCHOOL TUITION BY FAMILY INCOME, 1978

Family Income	Percent of Families	Estimated Median Tuition	Tax Credit	Percent of Income Refunded	Percent of Tuition Refunded
Less than $5,000	3.9%	$ 300*	$150	3.00%	50.0%
$ 5,000-9,999	10.1	250	125	1.25	50.0
10,000-14,999	17.4	300	150	1.00	50.0
15,000-24,999	39.9	500	250	1.00	50.0
25,000-39,999	21.0	1,000	250	0.625	25.0
40,000 & over	7.6	2,000	250	0.60	12.5

Source: U.S. Bureau of the Census, *Survey of Income and Education*, as reported in the *Congressional Record-Senate*, March 20, 1978, pp. S4158-60.

*Estimated median tuition for the lowest income group is more than the next group's because most of the children of the lowest-income families attend denominational schools in the inner-cities where the parishes are smaller and poorer than those that support schools in higher-income areas. The inner-city schools, therefore, must rely more heavily on tuition for their support.

The tuition tax credit debate, part of the consideration of the Tax Reform Act of 1978, centered on granting "tax credits" to anyone paying tuition. The proposed credit was to equal 50% of tuition, up to a total of $500, and the credit was to be refunded to tuition-paying families whose incomes were too low to incur any federal tax obligation.

The tax credit approach was a progressive form of tax deduction for education expenses (see Table 1). The approach avoids the regressive effects of a pure tax deduction, which gives greater benefits to taxpayers with higher incomes. For example, if a 50%-bracket taxpayer and a 25%-bracket taxpayer both deduct the same amount of tuition, the former gets back 50 cents for every dollar deducted, the latter only 25 cents. The pure deduction system is worst for the poorest families because it would not give them any additional benefits.

Tax credit debaters on both sides of the question—perhaps because most of them came from the education profession—did not seem to understand the significance of the tax credit approach. Opponents generally took the position that tax credits were just a ruse to aid private schools by the back door.

The Opposition's Arguments

Education leaders in New York City played particularly important roles in defeating the tuition tax credit bill in the 1978 Congress. The Board of Education instructed its Washington office to work for the bill's defeat; the office sent mailgrams at public expense to the superintendents and community school board members of the city's 32 districts urging them to convey their opposition to tax credits to key members of Congress. The Board of Higher Education also took a position opposed to tuition tax credits.

To organize opposition to the bill, a number of public education lobbying groups formed the Coalition to Save Public Education. Spearheaded by Albert Shanker's American Federation of Teachers (AFT), the coalition members included the National Education Association, the national PTA, and various state and local associations of school administrators. By the time the House committee voted on the bill, the coalition had 700 lobbyists from almost every state working in Washington to defeat the measure.

One major opposition group, the Council of Great City Schools, developed the position of the central cities against this tax reform. The council, which lobbies for the country's 28 largest school systems, has New York City's as its largest and leading member. Unfortunately for the large cities, the council based its opposition on an AFT analysis of the bill's *national* impact. The council performed no independent analysis of the bill's impact on central cities. Nor did New York City's Board of Education, in taking its stand, assess the impact locally.

This was unfortunate because the interests of the 28 largest cities are not identical with those of the teacher unions or even with the other 16,000 school districts in the nation (more than half of which have fewer than 1,000 students) that dominate by sheer numbers the national education lobbying groups.

Both the coalition and the council opposed tax credits to private schools *in principle* on the grounds that private schools (1) are elitist institutions, catering to wealthy clients who do not need aid; (2) are segregationist in their attraction to parents; (3) select the best students, leaving public schools with the most difficult educational problems; and (4) weaken support for the public school systems.

The council itself argued that tax credits would result in private school children receiving more federal aid than public school children. The council claimed the present distribution was $60 for private school students, $128 for public school students.[10] It believed that tax credits would tip the federal aid scale too heavily in favor of private school students. The council was also concerned that the bill would exacerbate the severe problem of declining enrollments in urban public school systems.

Other opponents echoed fears that tax credits would, in practice, mean fewer dollars for public schools and would encourage parents (presumably wealthy ones) to transfer their children to private schools. Some argued that the measure would help only the wealthy because the total potential aid (up to $500 in early versions of the plan) was too small to help lower-income families.

Finally, the broadest opposition argument held that the strength of American public education rested on its being a monopoly and that the slightest encouragement of the competitive private sector would permit parents to indulge their most antidemocratic sentiments and turn against public schools.

We cannot discuss tax credits, then, without considering the reasonableness of these fears. Do the characteristics of the private schools give grounds for them? Would federal appropriations for public education decline as a result of tax credits, and how would such a decline affect public schools? What democratizing aspects of public schools are threatened by encouragement given private schools? Would the wealthy benefit the most from tax credits?

Fears about Private Schools

The fears expressed by opponents of tax credits reflect serious concerns. We can judge the degree to which these fears are warranted only by examining them in the light of enrollment in private schools nationally. What proportion of all students do they enroll? What proportion of the wealthiest? Of the poorest?

Are private schools elitist? In its 1976 *Survey of Income and Education*, the census bureau found that private schools enrolled 10% of all elementary and secondary students (or 4.8 million children), 17% of all students from families whose income was above $25,000, and 6% of all whose family income was below $1,000 (in 1975 dollars).[11] Certainly, private schools enroll a higher proportion of upper-income than lower-income students. Nationally, 58% came from families with above-median incomes, 42% from families with below-median incomes.[12] But the differences are hardly large enough to establish private schools as elitist.

Looked at from the public school side, the 1976 census data show that 83% of all students from the wealthiest families in the country take advantage of free public education. This would indicate great support for American democratic values, *if* these students were in economically *integrated* schools. Certainly there is no great social advantage in providing free, *exclusive* educations to the wealthiest families in the country.

Unfortunately, the wealthiest students are disproportionately enrolled in public schools in places like Shaker Heights, Scarsdale, Marin County, Beverly Hills, Palo Alto, and Chevy Chase—exclusive districts with exclusive schools. A student can attend these schools only by living in the district, and to live in the district the family must be able to afford housing that is among the most expensive in the country. Residence in such a school district requires that a family make a capital investment in a home, an investment typically equal to 25%-40% of the cost of a luxury home.

The implications are startling: The most exclusive schools in America are suburban *public* schools. Enrollment in them is determined strictly by stringent economic criteria, that is, by the family's having enough capital to buy a house in a high-income school district. This economic requirement is surprisingly more severe than those set for admission to private schools serving families with comparably high incomes.

Private schools charge only tuition. In budgetary terms, this is an operating expense. It is far easier to cover this expense than it is to accumulate the capital needed to enter the best suburban systems. Private schools purposely select a certain proportion of students from lower-income families to achieve some degree of socioeconomic mix in their student bodies, and they have scholarship funds for those whose families cannot pay tuition. Fifteen percent of the students in schools belonging to the National Association of Independent Schools (NAIS) receive scholarship aid, and most of these schools charge the highest tuitions in the country.

Wealthy public schools, despite their financial resources, do not offer scholarships to low-income students from outside the district to achieve an economic mix in the student population. Instead, they treat residence in the district as an absolute requirement for admission to the school. Urban, selective, independent, high-tuition private schools provide a far more integrated education experience than their suburban public school rivals. Urban private schools, by removing one of the most powerful factors impelling middle- and upper-income white families to move to suburban districts, help keep the city economically and racially balanced.

Are private schools segregationist? Private schools are not scattered evenly over the country; they are concentrated in cities in the Northeast and the Midwest and are scarcest in Appalachia and the Deep South, regions with the highest concentrations of low-income and minority families. Consequently, national statistics will show a lower percentage of students from these families in private schools than will the figures for some specific regions. In some regions, private schools enroll even greater proportions of low-income and minority students than public schools do in these areas. In 1977, the National Center for Education Statistics found that in the 13 western states (including Alaska and Hawaii) blacks were more likely to use private schools than were whites; 7.4% of all elementary school-age blacks were in private schools compared with only 6.6% of all school-age whites.[13] In more than half the western states, private schools enrolled greater proportions of minorities than did public schools.[14]

Few states have collected reliable data on the racial makeup of private school enrollments. Most information must be drawn from federal surveys. California, however, has now collected data that break down minority enrollments in private schools in the state. The figures show that the largest private school systems in California enroll an equivalent or greater proportion of minority group students than the public system does (Table 2). The Catholic school system in California is 41.3% minority; the public system, 36.5%.

The minority enrollment in the independent schools may appear to be significantly lower than in California's other private schools and much lower than in the public schools. But, given their necessarily high tuitions, these independents have remarkably high percentages of minority students, who are supported principally by scholarships, not by outside aid. The 11% minority enrollment should most properly be compared with the minority enrollments in the public schools in Marin County, Belair, Newport Beach, La Jolla and similar districts serving high-income residents. These districts have only a trace of minority students.

Except for Catholic schools, comparable national data on minority enrollment in private schools are difficult to obtain. Private schools—even those in the same system, such as the Baptist day schools—tend not to collect racial and economic information on their students' families. The Lutheran Church (Missouri Synod) has done so, however, and reports that, nationally, 14% of its elementary and 18% of its high school students are black. The system enrolls a higher proportion of black students than the public schools.

In many communities, the Catholic schools also report high percentages of minority enrollments. In the District of Columbia, 77% of the Catholic elementary school enrollments in 1974-75 were minority students, and the proportion was increasing. In 1973-74, Catholic schools in Mobile, Alabama, reported a 37% black enrollment; Montgomery reported 43%. Minority enrollments were increasing in both districts.

Much of the concern that private schools are racially segregated comes from the experience with southern "segregation academies," which are often pointed to as examples of private schools' tendencies in this direction. These academies, however, are not traditional private schools. They are only a small, recent component of private education in the South, created by public authorities trying to shield public schools from the Supreme Court's desegregation order of 1954.

In the South, the "real" private schools have traditionally been far more integrationist than public schools in the region. Most southern private schools were segregated only after the Berea College case of 1907, in which the Supreme Court said the state could *force private schools to segregate*. When the Supreme Court turned the tables again in the 1950s, many private school systems in the South integrated *before* the public schools in their communities. (These include the Lutheran and Catholic systems of New Orleans and La-

TABLE 2: PERCENT DISTRIBUTION OF ENROLLMENT IN CALIFORNIA PUBLIC AND PRIVATE SCHOOLS BY RACE AND ETHNIC GROUP, 1978-79

School System	American Indian	Asian	Black	Hispanic	Other
Public	0.9%	4.7%*	10.1%	20.8%	63.5%
Catholic (statewide)	0.6	4.9	9.5	26.3	58.9
Lutheran (Missouri Synod)	–	12.0	14.0	2.1	72.9
Lutheran (American)	1.0	2.0	17.0	5.0	75.0
Baptist	0.2	2.4	12.5	8.8	76.1
Episcopal (Los Angeles)	–	9.1	17.0	8.8	65.1
Independent (NAIS)	0.2	4.6	3.5	2.4	89.3

Sources: California Executive Council for Nonpublic Schools; California State Dept. of Education; National Association of Independent Schools (NAIS).
Note: Figures may not add to 100% because of rounding.
*Includes Filipino.

fayette, Louisiana; Montgomery and Mobile, Alabama; and St. Louis, Missouri.)

Whatever the segregating aspects of specific private schools, the available evidence does not support the argument that, in general, private schools segregate racially. The belief that private schools have always been and are elitist, segregating institutions is incorrect.

Private Schools in New York City

Private schools play a far more important role in New York City than they do in most other American communities. The city has about 5% of all private schools in the United States and 7% of all private school students. (The city has 3% of all public and private elementary and secondary students.) In fact, the city has more private schools—almost 1,000—than public schools.

Unfortunately, there are no adequate data describing the family characteristics of New York City's private school pupils. Some data are available from federal programs—most notably the Elementary and Secondary Education Act's (ESEA) Title I (compensatory education). About 14% of the city's private school students are eligible for Title I assistance. Eligibility requirements include both residence in a low-income target area and a substantial reading deficiency. Private school students, tend not to have as severe reading disabilities as public school students, so the 14% figure substantially understates the proportion of private school students from low-income areas.

As we have noted, some information on the income of families sending their children to private schools became available for the first time in the U.S. Bureau of the Census's 1976 *Survey of Income and Education*, in which the bureau asked the same sample population questions about income and private school attendance. A sufficient number of responses were received from New York City families to permit the Foundation for Child Development to estimate the family income of New York City's school-age children. However, the foundation was unable to identify the incomes of the families with children in private schools because the sample did not include enough respondents in this category.

In order to compare the incomes of New York City families using public and private schools, we must, therefore, look at a larger portion of the sample, the Northeast region. (It is reasonable to assume that the Northeast data reflect the situation in New York City; indeed, they present a relatively conservative picture because of the greater proportion of high-income families in the region.) As expected, the data in Table 3 show that private schools have a smaller proportion of low-income families than the public schools and a slightly higher proportion of upper-income families. But what is notable is how similar are the income distributions of the families using the two types of schools. Public and private schools enroll children from families from the same economic spectrum.

As the critics of the tax credit approach suspected, there is some evidence that low-income families are priced out of private schools, but once the income threshold that permits families to pay for private school education is passed, there is a relatively even use of these schools across all income groups, with a slight increase for the highest-income groups. Tax credits would have eliminated the "priced-out" threshold, however, and let lower-income families use private schools almost as readily as lower-middle and middle-income families.

Socioeconomic Characteristics

New York City continues to offer a greater variety of private schools than any other large city in the country. We will look at the socioeconomic characteristics of the families of children in the four largest groups of private schools.

Catholic schools. Catholic schools account for one-third of the city's private schools and two-thirds of its private school enrollment. They report rapidly increasing minority enrollment, which should not be surprising for two reasons: (1) most Catholic schools—and virtually all Catholic elementary schools—are neighborhood schools and are influenced by the same population trends affecting the public schools; and (2) recent Hispanic immigrants are traditionally, if not actively, Catholic. Authorities for both the New York and Brooklyn dioceses report that their enrollments are now over 50% "minority." The New York Archdiocese's minority student population rose from 41% in 1975-76 to 60% in 1977-78.

Catholic schools are heavily concentrated in the inner-city areas of Manhattan, the Bronx, Brooklyn, and Queens. The system identified 47 elementary schools as "inner-city" in Manhattan in 1977. Of the 18,421 students in these schools, 78% were from minority groups. The system identified an additional 30 inner-city schools in the Bronx, for a total of 77 in the inner-city areas of these two boroughs. In 64 of these schools, more than half of the students were from families with incomes below poverty level. In slightly less

TABLE 3: ELEMENTARY AND SECONDARY ENROLLMENT IN NORTHEAST REGION PRIVATE AND PUBLIC SCHOOLS BY FAMILY INCOME, 1975 (numbers in thousands)

	Total		Private		Public	
Family Income	Number	Percent	Number	Percent	Number	Percent
Less than $5,000	842	7.7%	58	3.8%	784	8.3%
$5,000-9,999	1,862	17.1	189	12.4	1,673	17.8
10,000-14,999	2,235	20.5	259	17.1	1,976	21.1
15,000-19,999	2,214	20.3	329	21.7	1,885	20.1
20,000-29,999	2,529	23.2	431	28.3	2,098	22.3
30,000-49,999	998	9.2	196	12.9	802	8.6
50,000 & over	222	2.0	57	3.8	165	1.8
Total	10,902	100.0	1,519	100.0	9,383	100.0

Source: See Table 1.

than half of its inner-city elementary schools (36), the New York Archdiocese reported that more than 85% of the students came from families with below poverty-level incomes.[15]

Hebrew day schools. The city's second largest group of private schools are the Hebrew day schools (including Solomon Schecter, Torah Umesorah, and yeshivas). These schools enrolled 39,459 students in 1977-78.[16] Although reliable data are not available, school officials estimate that more than half their students come from low-income families. While these schools have virtually no black or Hispanic children, a high proportion of their students are immigrants or the children of recent immigrants. (In recent years, virtually all the Russian Jewish immigrants settling in New York City, estimated at over 10,000 and most with low incomes, reportedly have enrolled their children in Hebrew day schools.)

Only the most formalistic integrationist would argue that the integration of black and Hispanic children with these Eastern European and Middle Eastern minorities is a reasonable solution to the problems of racial integration in the city schools. The integration projected under the Constitution and the civil rights laws involves the minorities with the majority or dominant population.

Other denominational schools. Most of the city's other denominational schools are not neighborhood schools, even when they are attached to a parish. Typically, they are selective in their admissions and draw their students from a wide area of the city. These schools appear to enroll students from families with slightly lower than median incomes and to enroll slightly higher percentages of minority students than do the city's private independent schools. But neither set of schools has compiled and reported reliable family income data, so conclusions are tentative at best.

It is not necessary to enter a detailed argument about the segregative or integrative impact of the denominational schools enrolling large percentages of minorities or immigrants. Clearly, these schools cannot be characterized as racial havens when they enroll minorities. Further, those with high percentages of recent immigrants, such as many Catholic and Hebrew day schools, help stabilize the ethnic communities where they are located and deter families from leaving for the suburbs.

The more interesting questions concern the integrative impact on middle and upper-middle income neighborhoods of the denominational schools, especially the higher-tuition denominational schools, and the selective independent private schools. These schools do tend to enroll a lower proportion of minorities than the public system as a whole and often a lower proportion than are present in the schools' neighborhoods. Consequently, the independent schools often strike casual observers as encouraging the segregation of the city's school population. But it is misleading to compare the record of the independent schools with that of a neighborhood public or private school serving a population with a substantially different socioeconomic composition.

Independent schools. The independent schools should be evaluated against the norm for their principal clients—upper-income families. Are wealthier children in independent schools more racially isolated than wealthier children in public schools? Have the schools taken steps to minimize the racial and economic isolation of their students, and how do their efforts compare with the efforts of public schools serving comparable families?

New York City's independent schools enroll only about 9% of the city's private school students. But these schools are perhaps the most important to our argument because they enroll the students from families with the highest incomes, and they pride themselves on their selectivity (which some critics often perceive as exclusivity). True to their label, New York City's independent schools are not a tightly organized group; they do not collect information for the group as a whole about scholarship aid, minority enrollments, and the like. Many of the independent schools, however, belong to the National Association of Independent Schools, whose recent survey found its members nationally had an average minority group enrollment of 7%.[17] In 1978, the 44 member schools in New York City (with 56% of the city's private school students) had a minority enrollment twice the national average —13.9% (the figure is 25% or more in several of the schools)—and they devote a greater proportion of their school budgets to scholarship aid. Virtually all private schools in the city ensure that their enrollments include students from low-income and minority families.

The alternatives to these private schools are the public schools serving the highest median income districts in the New York metropolitan area. As we have already seen, only 11% of all minorities in the New York area live outside the city, and these are concentrated in a few Westchester communities like Mount Vernon, White Plains, Greenburg District No. 8, and some Long Island and New Jersey towns. Students from upper- and middle-income families who turn from the city's private schools to suburban public schools will be unlikely to attend schools with more than 2% minority enrollments, if that much, and with only a handful of students from lower-income families.

Fears of supporters of public schools that New York City private schools are havens for the wealthy trying to avoid racial and economic integration has not been supported by the statistics describing the socioeconomic characteristics of the private school population in the city. We have enough information from available sources to know that these schools are not elitist, selective institutions. We have seen that private schools contribute to integration in the city, but that the tax system makes it less likely that middle- and upper-income parents will remain in the city and select these schools.

Now we turn to the arguments concerning the direct and indirect fiscal impacts of private schools on the city and on its public schools.

The Fiscal Impact of Private Schools on New York City

The reasoning of the Council of Great City Schools, the supposed defender of the interests of large cities, is worth considering in greater detail. Basically, the council's opposition to tax credits rested on several assumptions that go to the heart of New York City's interest in federal tax reform.

Declining Enrollment

First, the council assumed declining enrollment damages a city's interests. For school administrators, it may cause such problems as underused buildings, oversized staffs that refuse to shrink without a struggle, teacher layoffs, rising teacher costs as younger, lower-salaried teachers are laid off, and a potential loss of state aid based on enrollment. But these are basically problems of management, and not necessarily serious threats to the viability of public school systems in large cities. In essence, declining enrollment means the same resources are available to serve fewer children. According to the National Institute of Education, declining enrollments are forcing schools to become much more flexible and are bringing about "innovative experimentation that [past] federal initiatives (and funds) failed to produce."[18]

Second, the council assumed that private schools would significantly accelerate the decline of public school enrollment. The fact is that by taking students from private schools, the great cities have slowed the decline of public school enrollments caused by falling birth rates and the outmigration of families. The percentage of students enrolled in private schools nationwide has dropped from its peak of 13.6% in 1960 to below 10% today. Catholic schools alone have lost 2.1 million, or 39%, of their students since 1965, while public schools have lost only 3.8% since their peak year in 1970-71.

The public schools have not lost students to the private schools. On the contrary, they have gained students from their private school neighbors. Is the council proposing that public policy should facilitate the decline of private school enrollments for the sake of ameliorating declines in urban public schools? A comparison of changes in New York City private and public school enrollments (Table 4) shows that the private schools have suffered a greater decline than the public schools—22% compared with 9% between 1970-71 and 1977-78. Year-by-year data indicate that the decline, which began earlier in the private schools in the late 1960s, did not manifest itself in the public schools until 1972. For a period of at least five years, the public schools' enrollment grew while the private schools' decline.[19]

Transfers from Private Schools

New York and other large cities should also recognize that a transfer student from a private school in the city does not provide the same benefits as a new resident. The family of the transfer student does not pay additional tax revenue; as a result, the pressure on a city's tax base increases. Although cities do obtain some increase in state aid, it is less than it might appear. They receive virtually no increase in federal aid. Almost all the great cities are in heavily populated states. These states provide less than 50% of the statewide costs of education and typically provide an even lower percentage of the education costs in their largest cities.

Thus, transfers of students from local private schools place greater demands on the local tax base than they do on the state. Even if this were not the case, even if the state provided 60% or more of the total cost of education, the great cities would still have to increase their demands on their own tax resources to accommodate the additional students. Furthermore, the assumption that state aid will increase with enrollment must be modified in another important respect. Only a portion of state aid is dependent on average daily attendance; the rest comes as grants or is based on some portion of the school-age population. New York City officials estimate that almost $300 million of the $800 million the city receives from the state is independent of enrollment in the city's public schools. Ironically, per pu-

TABLE 4: ELEMENTARY AND SECONDARY ENROLLMENT IN NEW YORK CITY PRIVATE AND PUBLIC SCHOOLS, 1970-71–1977-78

Category	1970-71		1977-78		Change	
	Number	Percent	Number	Percent	Number	Percent
PRIVATE SCHOOLS						
Roman Catholic	325,620	21.1	222,968	16.5	(102,652)	(31.5)
Brooklyn Diocese (Brooklyn, Queens)	198,003	12.8	126,787	9.4	(71,216)	(36.0)
New York Archidocese (Manhattan, Bronx, Staten Island)	127,617	8.3	96,181	7.1	(31,436)	(24.6)
Jewish	32,770	2.1	39,459	2.9	6,689	20.4
Nonaffiliated	6,053	0.4	5,663	0.4	(390)	(6.4)
Conservative	1,312	0.1	1,476	0.1	164	12.5
Orthodox	25,405	1.6	32,320	2.4	6,915	27.2
Other denominational	15,399	1.1	17,375	1.3	1,976	12.8
Lutheran	6,056	0.4	6,727	0.5	671	11.1
Episcopal	4,204	0.3	3,989	0.3	(215)	(5.1)
Greek Orthodox	2,403	0.2	3,001	0.2	598	24.9
Seventh Day Adventist	1,546	0.1	2,151	0.2	605	39.1
Other*	1,190	0.1	1,507	0.1	317	26.6
Independent	31,413	2.0	36,674	2.7	5,261	16.7
PRIVATE SCHOOLS–TOTAL	405,202	26.3	316,476	23.4	(88,726)	(21.9)
PUBLIC SCHOOLS–TOTAL	1,135,298	73.7	1,033,813	76.6	(101,485)	(8.9)
TOTAL ENROLLMENT	1,540,500	100.0	1,350,289	100.0	(190,211)	(12.3)

Source: New York State Education Department, Information Center on Education, March 1979.
*Includes Society of Friends, Baptist, Presbyterian, and Russian Orthodox.

pil state aid for use within public schools would be higher if the city had fewer transfers from private schools.

New York City's public school enrollment peaked in 1971-72 at 1,140,349. Enrollment in 1978-79 was 998,969, a loss of 141,380 students (12.4%). New York State has a "hold-harmless" provision in its state aid formula, by which a district will not receive less aid because of a loss in enrollment than it did in the previous year. Thus, the decline in enrollment does not lower the amount of state aid the city receives. Almost half of all the students in private schools in New York City would have to transfer into public schools before the system would receive any additional state money—assuming the city did not suffer any further declines in its base population.

In summary, because of the hold-harmless provision, the fewer the students, the more funds per remaining student. Transfer students from the private schools reduce the level of *available* aid per pupil. In the past, New York City increased its public school budget in response to the pressures of inflation, a maturing staff earning higher salaries, increased employee benefits, and increased enrollment. Today, under the pressure of its budget troubles, the city has essentially frozen the school system's budget (while providing higher per pupil supports). The portion of the school system's budget provided by the city will not increase with transfers from the private schools. The council's arguments do not apply to New York City. More than that, the assumption that urban public schools suffer from measures that stabilize or enhance the enrollments of private schools is inapplicable in New York City.

Finally, New York City currently covers 62% of the total cost of educating its students from its own tax revenues ($1.73 billion from city sources, $800 million from the state, and $270 million from the federal government in 1978-79). Virtually none of the federal income would change with increased enrollments caused by transfers from local private schools. Federal funds are based principally on the total school-age population; private school pupils already earn federal funds for the public schools. Thus, transfers from private schools increase the drain on the resources of the public schools without appreciably increasing revenues.

Reduced Federal and Local Support for Public Schools

Irrespective of the details of state, federal, and local funding, the council made an argument that requires closer attention: Will aid to private schools reduce support for public schools?

The long-standing argument in Washington over whether private schools should be included in any federal aid has repeatedly tied up passage of any comprehensive education aid program, thereby delaying and limiting the amount of federal money available to public schools. Given this background, it is unlikely that aid proposals at the federal level that exclude private schools will receive more congressional support than they have in the past. Excluding private schools from aid has limited, not increased, federal aid to education.

The council assumes that a dollar for private schools is a dollar siphoned off from the amount available for public schools. But the introduction of tax deductions for all education expenses changes the rules of the game. No critic has suggested that Congress cut any of its existing aid programs for public education in order to fund tax credits. Tax credits do not require any budget allocation, only a budget adjustment.

The council also feared a loss of support at the local level. Here it seriously miscalculated the impact of private schools on central cities, particularly, on New York City. Private schools are businesses and the city receives income from taxes on the economic activity these schools generate and from increased tax revenues from the families who remain in the city, or who move back, to make use of the private schools.

City Revenues from Private Schools

In 1978-79, private schools enrolled 304,346 New York City students, compared with 970,000 in the public system. These private schools constitute a sizable economic enterprise within New York City. In the Catholic system, actual school expenditures (which far exceed tuitions) for operating costs, exclusive of capital costs or depreciation, average $750 to $1,000 per pupil in the elementary schools and $2,000 in the high schools. Costs in other denominational schools are generally higher—about $1,000 per student in unaffiliated inner-city private schools, $2,000 in the Hebrew day schools, and over $3,000 in unaffiliated schools outside the inner city. We can roughly estimate expenditures of about $220 million by the Catholic schools, $100 million by the other denominational schools, and $100 million by the independent schools for a total of $420 million, and the amount may be as high as $500 million. Most of the total is spent on salaries, maintenance, and utilities, generating revenue for the city.

The city's tax income from all sources amounts to about 10% of total personal income in New York City. This figure is higher than the income tax rate because the city's tax income is generated from sales and other taxes as well and because of the multiplier effect, that is, money spent on salaries in the city is taxed as income, taxed when respent by families for goods and services, then taxed as income to businesses, and so on. It is reasonable to estimate that the city receives at least $40 million from the business-related activities of private schools.

A tax deductability of education expenses or a tax credit alone would bring the city substantial additional income. Say a tax credit of 50% of tuition up to $500 per pupil were enacted. The median tuition for Catholic elementary schools in the city is now about $300; for high schools, $700. Median tuitions for almost all other private schools are above $1,000. (We do not include in this estimate the significant number of scholarship students whose tuitions are under $1,000.) In its first year, the tax credit would cover about half the tuition costs of the Catholic schools and a smaller percentage of the higher tuitions of the other private schools. Its initial effect would be to bring about $90 million into New York City's economy.

With the tax credit, most Catholic schools, in the long run, would probably cover a greater proportion of school expenses through tuition. But it is not likely that, after tax credits have been taken, the schools would charge parents effective tuitions higher than before the legislation was passed. Thus, there is a limit on how high tuitions could rise. It is unlikely that a school charging $300 per year could increase its tuition to $1,000 in order to take full advantage of the tax credit, since then parents would be paying $200 more than before the tax credit. In the near future, the city could expect tax credits to bring a total of $125 million annually into its economy and could collect between $10 million and $15 million of this credit through its own tax system.

By retaining families in the city, private schools increase the city's tax revenues. If we conservatively estimate that at least 30,000 of the more than 300,000 private school students belong to separate families with incomes of over $40,000 annually and that these families produce only $6,000 a year in city tax revenues, we find that they account for $180 million a year in city revenues.

The key to this analysis is that schools are extremely important factors in a family's choice of where it lives. Private schools keep in the city many families who would otherwise leave—and they attract many others back from the suburbs (as suggested in recent articles in the local press). Note the enrollment trends cited by Community School Board No. 3 on Manhattan's Upper West Side in its application for federal school integration funds. In one of the most integrated neighborhoods in the country—integrated by income, race, language, household size, religion, and age—the school board stated that more than 50% of the white parents send their children to private elementary schools. As their children reach the middle elementary grades, these parents tend to transfer them to private schools or to move out of the city.

Private schools are not stealing students from the public schools. In fact, as noted earlier, private school enrollment overall has dropped more rapidly than public school enrollment. Rather, a greater proportion of whites who have stayed in the neighborhood are using private schools. Every middle-class New Yorker knows a young family that has moved to Montclair, Scarsdale, or Greenwich when its children reached school age. A disproportionate number of those who stay in the city are using private schools.

And, contrary to popular belief, this pattern of school use helps the city's public schools—in two rather direct and two more subtle ways. First, families able to enroll their children in private schools are more likely to remain in the city and contribute to its economy, while the private schools themselves generate tax dollars for the city's coffers. Consequently, city revenues increase and so resources for public education increase. Further, the proportion of the city's school-age children in private schools is 2.5 times the comparable nationwide ratio. Yet New York City spends more per public school pupil than any other major city—more, in fact, than most of the city's private schools. There is no evidence supporting the notion that the more people use private schools, the less willing they are to support public schools. Families willing to invest much of their income in education are willing generally to support education tax measures.

Second, the public schools are relieved of the burden of additional students at a time when education budgets are tight. This is especially important for the future since more students will not increase state per pupil funding because of the hold-harmless provision noted earlier.

Third, in many parts of the city, families split their children between public and private schools. In Brooklyn in particular, Catholic elementary schools feed their students into public junior and senior high schools. To an extent, many private schools function as part of the public system of education in the city as students move back and forth between the two systems.

Fourth, the private schools often set standards against which public schools are measured. Particularly in the inner city, competition between private and public schools encourages the best from both. District 3, for example, openly competed with private schools on the West Side—obtaining federal funds to widen the variety of its curriculum offerings—in an attempt to attract new enrollment from white families. The new flexibility benefited all the children in the district. Competition is especially important as a device for improving a system as large as New York City's public system, because all recent political reforms of the public schools have not been able to improve school quality quickly enough to affect the children whose parents were pressing for the improvements—within the three to six years children spend at each level of the city's public schools.

Educational Benefits from Private Schools: The Inner City

The New York City Board of Education has an obligation to provide the best education possible for all children in the city, especially children from minority and low-income families. Inner-city parents generally know—and state achievement test results show—that private schools in the inner city, on average, graduate students with higher achievement levels than the public schools in the same neighborhoods. Inner-city private schools also post absentee rates averaging 5%, compared with the public system's 17% rate citywide and 35% rate in the inner city. Good schools do not just offer services; they must encourage children to want to learn. The absentee rates of the two types of schools are evidence of at least some success of private schools in the inner city.

This is *not* to say that there are no excellent public schools in the inner city. Whenever partisans discuss the relative merits of public and private schools, they tend to fall into two traps. One argument assumes that all private schools are better than all public schools. This is not the case, not even in the inner city, where private schools do better *on average*. The other argument holds that private schools' superior achievement is a simple matter of (1) higher socioeconomic status of their students (socioeconomic status being the major factor related to school achievement); (2) the selection or expulsion practices of the schools; or (3) the self-selection by the parents. None of these three assumptions is true, either.

First, the socioeconomic status of private and public school students in most inner-city neighborhoods is not appreciably different, and the minor differences are not sufficient to explain the difference in achievement found in graduates of the two types of schools. Both public and private schools are pulling students from the same low-income neighborhoods in the inner city.

Second, inner-city private schools have virtually no selection process. (Indeed, discovering the superior inner-city students, given a large preschool population with language difficulties and many families who do not speak English, would be very hard to do.) As far as expulsion is concerned, these schools simply do not exercise that authority often enough to account for the difference in median achievement rates. Their use of expulsion is quite rare, in fact, and many schools do not expel any child in the course of a school year. And expulsion is *not* the prerogative of the private schools; public schools exercise de facto, if not de jure, expulsion simply by ignoring students they consider troublesome—hence, their astonomical absentee and dropout rates.

Third, the superior achievement of private school students in the inner city can be attributed, to some extent, to deliberate selection of the school by parents with greater academic ambitions for their children. But this cannot be a substantial reason. There are many public schools in inner-city neighborhoods in which there are no private schools. Where are the children of the more supportive parents in these areas except in public school?

Furthermore, national survey data report that parents of inner-city *public* school children put great emphasis on the importance of education for the success of their children. They put more emphasis, in fact, than middle-class parents do. The explanation cannot be that public schools lack sufficient numbers of parents who support education strongly.

And, of course, the fact that the most ambitious inner-city parents would choose private schools—even if true—must be surprising. Inner-city private schools typically spend 25% to 33% of the amount spent per pupil by public schools. (In one inner-city neighborhood, we found a private school operating on 10% of the budget of the nearby public school and still outperforming that school.[20]) Not only do they spend less, but elementary private schools also have a higher pupil-teacher ratio—in New York City, 32:1 compared with the public system's 25:1. And most have austere settings, virtually no special equipment, and a relative scarcity of library books. On their face, most private schools would not be the obvious choice of parents seeking a superior education for their children.

Still, inner-city private schools have a reputation for performing well. Examining a matched sample of public and private school students in the inner city, Gregory Hancock found that the average private school child entered first grade with a slightly lower I.Q. than his public school counterpart, but by the sixth grade he was reading one and a half to two years ahead of the public school pupil.[21]

There is no argument that private schools could or should replace public schools in the inner city or elsewhere. But the New York City Board of Education should recognize that many private schools do offer the educational quality, especially in the inner city, that it is the board's responsibility to provide for public school children. It seems wasteful to let the inner-city private schools close because they cannot be financed, without fighting for tax measures that would alleviate their financial plight. It is an odd position for the champions of quality education for the least advantaged in our city to oppose the single piece of federal legislation most likely to preserve many of the best inner-city schools.

Notes

1. Trude W. Lash, Heidi Sigal, and Deanna Dudzinski, *Children and Families in New York City: An Analysis of the 1976 Survey of Income and Education* (New York: Foundation for Child Development, February 1979), pp. 44-45.

2. The proportion of the loss of white families attributable to their flight to the suburbs has been extrapolated from calculations made by Milton Bins and Alvin H. Townsel for the Council of Great City Schools of the components of the rise in the proportion of minority group residents in New York City's population between 1950 (9.8%) and 1970 (22.8%). They found lower birth rates among whites to be almost equally as important as white outmigration. Lower white birth rates reduce both white family size and the number of white families with school-age children; hence, outmigration must play a relatively large role in the absolute decline in the number of white families.

Milton Bins and Alvin H. Townsel, "Changing/Declining Enrollments in Large City School Systems," in Susan Abramowitz and Stuart Rosenfeld, eds., *Declining Enrollment: The Challenge of the Coming Decade* (Washington, D.C.: National Institute of Education, U.S. Government Printing Office, March 1978,, pp. 136-37, Table 4.4.

3. Ibid., p. 138. Consistent evidence of migration related to school age has been reported by Harry H. Long and Paul C. Glick, "Short Paper: How Racial Composition of Cities Changes," *Land Economics*, August 1975, pp. 258-67.

4. Lash et al., *Children and Families in New York City*, p. 30, Table I-3.

5. Ibid., p. 106, Table IIIb-1a.

6. Bins and Townsel, "Changing/Declining Enrollments," p. 140, Table 4.6.

7. William H. Frey, "Class-specific White Flight: A Comparative Analysis of Large American Cities," Institute for Research on Poverty Discussion Papers, No. 507-78 (Madison: University of Wisconsin, October 1978), p. 1.

8. Janet Rothenberg Pack, "Determinants of Migration to Central Cities," *Journal of Regional Science*, 13, pp. 249-60.

9. The author wishes to acknowlege the valuable suggestions of tax consultants Harry A. Skydell, C.P.A., of Skydell Shatz and Co., and Warren Lieberman, C.P.A., of Louis Lieberman and Co. Any errors in this discussion are solely the author's responsibility.

10. The council's estimate of current federal aid to private schools was incorrect. New York City's public school system receives direct federal aid of almost $300 per pupil; private schools receive no direct aid.

Most recent federal education aid programs, including ESEA Title I (compensatory education), follow a child-benefit approach by which students are entitled to receive aid regardless of the type of school they attend. However, the federal funds for these programs are given to the public school systems, not the individual private schools. The public system hires the teachers, plans the programs, and delivers the services to the private school students. Private schools have no direct control over funds, teachers, or programs. In most cases, it is as if the private school students were enrolled in a public system's afterschool program. So it is misleading to attribute the total value of services delivered to individual private school students as "aid to private schools."

Furthermore, the $60 figure is not even an accurate estimate of the value of services delivered to private school students. The U.S. Department of Health, Education, and Welfare cannot state in any systematic fashion the dollar value of services actually being delivered to private school students. In three states, authorities have refused to deliver *any* services to private school students.

11. U.S. Bureau of the Census, *Survey of Income and Education*, as reported in the *Congressional Record-Senate*, March 20, 1978, pp. S4158-60, Table 1B.

12. National Center for Education Statistics, *The Condition of Education, 1977*, Vol. 3, Part 1 (Washington, D.C.: U.S. Government

Printing Office, 1970), pp. 74, 77.

13. Ibid., p. 192, Table 4.05.

14. U.S. Department of Health, Education, and Welfare, Office of Civil Rights, *Directory of Public Elementary and Secondary Schools in Selected Districts: Enrollment and Staff by Racial/Ethnic Groups* (Washington, D.C.: U.S. Government Printing Office, Fall 1977).

15. Robert G. Hoyt, "Learning a Lesson From the Catholic Schools," *New York*, Sept. 12, 1977, as reprinted in *Tax Treatment of Tuition Expenses*, Hearings Before the Committee on Ways and Means, House of Representatives, 95th Congress, Second Session, Feb. 14-17, and 21, 1978, Serial 95-56 (Washington, D.C.: U.S. Government Printing Office, 1978), pp. 365-70. See also Edward B. Fiske, "Catholic Schools Attain Stability in Urban Crisis," *New York Times*, Oct. 9, 1977.

16. Donald A. Erickson, Richard L. Nault, and Bruce Cooper, assisted by Robert Lamborn, "Recent Enrollment Trends in U.S. Nonpublic Schools," in Abramowitz and Rosenfeld, *Declining Enrollments*, p. 86, Table 3.2.

17. Ibid., p. 111; also William Dandridge, unpublished memo (National Association of Independent Schools, May 23, 1979).

18. Abramowitz and Rosenfeld, *Declining Enrollments*, p. 452.

19. James Brady, "Enrollments in Nonpublic New York City Schools, 1970-1978," unpublished memo (New York State Education Department, Information Center of Education, March 1979).

20. Thomas Vitullo-Martin, Julia Vitullo-Martin, and Glenn Pasanen, *Parents, Policies, and Political Structures in Nonpublic Schools*, research supported by a basic research grant from the National Institute of Education, forthcoming, Summer 1979.

21. Gregory Hancock, "Public School, Parochial School: A Comparative Analysis of Governmental and Catholic Elementary Schooling in a Large City" (Ph.D. diss., University of Chicago, 1971), p. 54.

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Note to Readers

City Almanac apologizes for the lengthy delay in publishing this issue. The editors plan to accelerate the preparation of subsequent issues in order to bring *City Almanac* back on schedule with Vol. 14, No. 2 (August 1979).

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Senator **Chafee**. Thank you very much, Dr. Vitullo-Martin.

Now, Mr. Richard Dingman.

STATEMENT OF RICHARD B. DINGMAN, LEGISLATIVE DIRECTOR, THE MORAL MAJORITY, WASHINGTON, D.C.

Mr. **Dingman**. Thank you, Mr. Chairman.

I appreciate the opportunity to present the position of the Moral Majority on the matter of tuition tax credits. I will attempt to abbreviate my prepared remarks.

As a former executive director of the House Republican Study Committee and as a town councilman for 10 years, I have had many opportunities to review the concept of tax credits in education both from an analytical and a practical perspective.

We believe public schools are a necessary ingredient of our pluralistic society, but that private schools also hold an important place. Neither should control the other. They should be free to compete in the marketplace of ideas and excellence.

Parents should have the freedom to choose the system which best meets their needs and desires for their children.

When parents decide to enroll their child in a private school, it is usually because the institution reflects the values of that parent and provides a quality of education acceptable to the parents. Public schools, to a large extent, are unable to promote moral and religious principles; therefore, to many parents, private schools are the only vehicle for providing these vital ingredients in their child's education.

During my 13 years of congressional staff service I have witnessed steadily growing support for tuition tax credits. Now, as the legislative director for a 4.5 million member organization I can tell you that we receive literally hundreds of pieces of mail each week from concerned citizens requesting information and asking what they can do to assist in the passage of this legislation. The bottom line is that there is a large amount of active support existing for the passage of a tuition tax credit measure in this session of Congress.

In considering this legislation, we must be careful to insure that tax credits are not given to parents who send their children to schools which discriminate for racist reasons. As I understand this proposal, it would not allow for parents of children in such schools to receive the credits, a provision of this bill that the Moral Majority strongly supports. However, we must also be careful to make certain there is strong protection against government harassment by bureaucrats who would like to make such schools "guilty until proven innocent."

Private schools are growing at a rapid rate. The reasons for this are simple: Besides the desire for religious training, many parents are distraught over the breakdown of discipline. the presence of drugs, and the general decline of commitment to excellence found in many public schools.

Many public school administrators and teachers nationwide contend that the passage of this legislation would cause the demise of public education. That charge is sheer nonsense. Our history is full of examples which prove that where there is a high demand for a product, competition almost always results in better products. I am convinced the same is true in education. Those public schools which provide quality education will have nothing to fear; it is only the inferior who need fear competition, and that type always wants government protection.

The fact of the matter is that these educators who oppose tuition tax credits generally want to have their cake and eat it too. They have rejected parental values regarding the education of their children, while simultaneously trying to bar parents from looking at new educational options for their children.

Competition for educational excellence should be encouraged, not stifled. Given the choice between public and private education, I believe most parents would still opt for the public school system. However, some would choose the private schools, and that is a choice which should not be discouraged by making parents fully support the Government's school system when they are at the same time paying tuition at a private schools.

The passage of S. 528 would help solve some of the problems that I have pointed out.

Thank you, Mr. Chairman.

[Mr. Dingman's prepared statement follows:)

PREPARED TESTIMONY BY RICHARD B. DINGMAN, LEGISLATIVE DIRECTOR, MORAL MAJORITY INC.

I wish to thank the members of this committee for allowing me to express the Moral Majority's position on the issue of tuition tax credits. As the former executive director of the House Republican Study Committee and a town councilman for 10 years in Vienna, Virginia, I have had many opportunities to review the concept of tax credits in education from both an analytical and practical perspective. Education has always been a hallmark of American growth and excellence. In the early days, education was handled almost exclusively by parents. As our society grew, parents joined forces and resources to provide education for their children. With still more growth, public schools came on the scene to assure that everyone had the opportunity of education. However, private schools still continued and education was still the primary domain of parents.

Somehow, over the years, some people—usually professional educators—have assumed the proposition that the right and responsibility for eduction has shifted from the parents to the government. We reject that proposition.

We believe public schools are a necessary ingredient in our pluralistic society, but that private schools also hold an important place. Neither should control the other. They should be Free to compete in the marketplace of ideas and excellence. Parents should have the freedom to choose the system which best meets their needs and desires for their children.

Tuition tax credits are an essential vehicle for providing this free choice in education. To require that all students without economic means attend only government schools, is to impair the right of access to divergent thoughts for today's youth.

When parents decide to enroll their child in a private school, it is usually because the institution reflects the values of that parent and provides a quality of education acceptable to the parents. Public schools, to a large extent, are unable to promote moral and religious principles. Therefore, to many parents, private schools are the only vehicle for providing these vital ingredients in their child's education.

Public schools in America have been treated with the status of an established church. Everyone, no matter what they believe, is required to support them. Those who disagree or want something else for their children are only allowed to have access to it after they have paid their dues to the establishment.

True freedom would allow parents to spend a greater share of their educational dollars where they see fit, and tuition tax credits bring us closer to that situation. They partially relieve parents of the unfair burden of paying twice when they decide a private school is the best choice for their child.

During my 13 years of congressional staff service I have witnessed steadily growing support for tuition tax credits. Now, as the legislative director for a 4½-million-member organization I can tell you that we receive literally hundreds of pieces of mail each week from concerned citizens requesting information and asking what they can do to assist in the passage of this legislation. The bottom line is that large amount of active support exists for the passage of a tuition tax credit measure in this session of Congress.

In considering this legislation, we must be careful to ensure that tax credits are not given to parents who send their children to schools which discriminate for racist reasons. As I understand this proposal, it would not allow for parents of children in such schools to receive the credits, a provision of this bill that the moral majority strongly supports. However, we must also be careful to make certain there is strong protection against government harassment by bureaucrats who would like to make such schools "guilty until proven innocent".

Private schools are growing at a rapid rate. The reasons for this are simple. Besides the desire for religious training, many parents are distraught over the breakdown of discipline, the presence of drugs and a general decline of commitment to excellence found in many public schools.

Many public school administrators and teachers nationwide contend that the passage of this legislation could cause the demise of public education. That charge is sheer nonsense. Our history is full of examples which prove that where there is high demand for a product, competition almost always results in better products. I am convinced the same is true in education. Those public school which provide quality education will have nothing to fear. It is only the inferior who need fear competition. That type always want government protection.

The fact of the matter is that these educators who oppose tuition tax credits want to have their cake and eat it too. They have rejected parental values regarding the education of their children, while simultaneously trying to bar parents from looking at new educational options for their children.

Competition for educational excellence should be encouraged, not stifled. Given the choice between public and private education, I believe most parents would still opt for the public school system. However, some would choose the private schools, and that is a choice which should not be discouraged by making parents fully support the government's school systems when they are at the same time paying tuition in a private school.

I believe passage of S. 528 would help solve some of the problems that I have pointed out. Once again, I thank you for the opportunity to express our viewpoint. I would be happy to answer any questions that the committee may have at this time.

Senator **Durenberger**. Thank you very much.

I take it that completes the panel. There was one question that I asked this morning and I was bothered by the answer, and now that I have a few experts here I would like to re-ask the question. I recall asking the Secretary why he didn't recommend that we apply the tuition tax credit proposal to public schools as well as to private schools, and he said his first reason was that everybody had access to the public school systems, and the second one was money. I tried to question the first one, but we either ran out of time or the answer I got showed that he hadn't really thought it out.

I am bothered by the fact that even in my own community in Minneapolis there is a ghettoization of people. I am not trying to use that in a pejorative sense, but there is a substantial degree of ghettoization in this country, particularly for those who are economically and in some cases racially disadvantaged. And to say that there is a school building that you can go to does not say that you have the same access or the same choice that the Secretary in his opening statement said we were trying to provide.

I wonder if I might ask, as a general question to any of you who would like to respond, that you give us some advice on whether or not it might be well to expand the notion of tax credits and vouchers beyond the private school system.

Mrs. **Simpson**. I would like to get some clarification on your question, please. Were you stating that you were questioning Secretary

Bell this morning as to why this tuition tax credit shouldn't be applied also to those who attend public schools?

Senator **Durenberger**. Yes.

Mrs. **Simpson**. But in what sense? I want that defined. I mean, how would they benefit from it? I know in private schools of course they would be able to take a deduction and get the refund on it, but I am trying to understand in what sense would they benefit from this if it is supplied to those in the public schools? Is it a question of lack of equity? I am just trying to understand how they would benefit.

Senator **Durenberger**. Well, he testified that the value of tuition tax credits is that it brings choice and diversity, and we didn't explore "diversity." He could have meant that we maintain a dual system of private and governmental schools.

Mrs. **Simpson**. Right.

Senator **Durenberger**. My notion is that we ought to have diversity within the public school system, and that people ought to have choices within that system, and they don't have them today. I mean, many people don't have them today. And one of the reasons that a tuition tax credit today doesn't do you much good in the public school system is that there is no tuition.

Mrs. **Simpson**. Yes, that's right.

Senator **Durenberger**. But if the public school system could adjust to the notion of some tuition and incorporate that into the differences in the quality of education, or at least the cost of education, from one school to another, then a credit might make some sense.

Dr. **Vitullo-Martin**. May I comment on that?

There is a real problem for the parents who wish to place their children in public schools outside of their district. They can do that; they are generally charged the per-pupil expenditure rate, which means the public school system, by the way, makes a profit, because they get reimbursed by the State for a portion of that.

The problem for the parent, though, is that they cannot deduct that expenditure. And this happens in the area of New York. If parents in the South Bronx wish to send their kids to Brownsville, which is one of the finest school systems in the State, they will pay about $5,000 per pupil that is not tax deductible.

It would seem to me that an amendment that limited the tuition payment to tuition out of the district would make sense. If you made the amendment to allow any tuition paid to public schools, then of course you will find the public schools lopping off many services in expectation that they are going to be able to split the cost with the Federal Government, 50–50, and you will be in a different kind of situation. But it would make sense to free up the system.

Similarly, it would make sense to expand this concept to higher education as well—the concept. In general, my point would be to quit taking money from people who are supporting education, period. You could eliminate much of your need for the loans program to the higher education, because you are taking more money from those parents taking out those loans than you are giving them. You are taking more money through the tax system than you are giving to them with the loan paid that you are giving them. It is the same problem with elementary and secondary education.

Senator **Durenberger**. Does anyone else care to comment on that?

Mr. **Dingman**. Sir, it seems to me that what you are alluding to is some form of a voucher system. Is that correct?

Senator **Durenberger**. Well, you could conceive of a combination of a tax credit and either a refundable credit, which is a subject that was brought up by the Senator from Oklahoma this morning, or a voucher, which is the proposal in several States and also the Administration proposal. You might eventually end up with a voucher for everybody; but, right now, the concept of "voucher" seems to have been restricted primarily to the economically disadvantaged.

Mr. **Dingman**. Well, I would only say, personally, that I would favor any technique that would increase the options for individuals, even if it was within school systems where there is no tuition paid, in the public system, and being able to choose school A over school B.

I realize the problems that creates for the administration—they are horrendous—but I would favor in general the concept of some kind of voucher that would increase the options.

Senator **Durenberger**. All right. You don't have to comment. Thank you very much.

Dave, do you have a question?

Senator **Boren**. Thank you, Mr. Chairman.

Mrs. Simpson and perhaps others might want to comment on this, too.

I raised the question of the refundability of the tuition tax credit this morning.

Mrs. **Simpson**. Excuse me, I didn't hear that, Senator.

Senator **Boren**. Earlier I raised the question of refundability, pointing out that some 46 percent of black families and 37 percent of Latin families—we could go down the list—fall below the income figure, the $10,000 family income figure.

So therefore, at least in terms of tuition, they will not be benefited by this bill unless we have a refundable tax credit; in other words, they get the $300, whether they happen to owe any Federal income tax this year or not.

Would you support adding refundability as a provision to this—the Secretary talked in terms of open access and choice—so that we make sure that we have open access to private education by those particular groups which tend to fall below those income levels? Would you favor adding refundability?

Mrs. **Simpson**. Well, let me just preface my answer by stating that students at our schools—first of all, let me just say to you that there are an enormous amount of parents who would immediately transfer their kids to a private school or an alternate system if they had the funds to do so.

Now, the students that I work with daily and that many other schools work with in the New York City area and in large urban centers throughout the United States, their parents are on fixed incomes, or they are jobless. They are people who definitely cannot afford to pay the traditional large amount of tuition for schools.

So I am supporting the tuition tax initiative because it represents some kind of action, to address ourselves to the problem out there of underachievement in the public schools. But the student population that I service really would not benefit from this because of the fact they are on fixed incomes. Most of them are one-parent families. So even with the modest tuition that we charge, we also give out scholarships.

They would not benefit from this; they cannot get refunds if they are not working. So this would not really benefit them. This is just a start. The voucher would be the thing that would help them.

Senator **Boren**. In essence, the same as refundability.

Mrs. **Simpson**. Yes.

Senator **Boren**. So you would favor refundability—as a concept?

Mrs. **Simpson**. Yes. Right.

Senator **Boren**. Would the rest of you favor refundability as a concept?

Dr. **Vitullo-Martin**. Not exactly refundability.

Senator **Boren**. Whether it is a voucher or refundability—in other words, it puts the same amount of money in the pocket of the family that makes $10,000 or less as for the family that makes more.

Dr. **Vitullo-Martin**. A different mechanism, right. I appreciate the point. The point is that what you are doing will shape to some extent who is able to go to private schools. Of course, what you are not doing now also shapes who is able to go to private schools.

Senator **Boren**. Certainly.

Dr. **Vitullo-Martin**. And more strongly.

But I would suggest that you permit the lower-income parents whose incomes are so low that they don't have any tax obligation the same benefits that you permit to U.S. Steel, that you allow those tax credits to accumulate and maybe be transferred to other people. I think the parents could figure out how to use them.

[Laughter.]

Senator **Boren**. We used to do that. We don't do that anymore for United States Steel, either, and we happen to be cosponsors of the repeal measure.

But would you favor the idea, then, of providing some system to give the same benefit to those under $10,000 that you do above?

Dr. **Vitullo-Martin**. Yes.

Senator **Boren**. Do any of the rest of you want to comment on that?

Mr. **Whitcomb**. If I understand the question correctly, I would have to say that I can't see that refundability would have anything to do with the real purpose of this proposal. The purpose, as I understand it, is to make it possible for families to put their children in a private school either if they are dissatisfied or if they see some advantage in that private school, and it isn't to reward them because they have a child going to a school.

Senator **Boren**. No, no. For a moment I will argue that. I am very much in favor of choice and very much opposed to Federal control of the private sector; I just don't think public funds ought to directly or indirectly go into the private sector.

But let's assume for a minute that we buy the argument of choice, that the aim of this legislation is to give the parent a choice of where to send his or her child to school. All I am saying is, shouldn't that mechanism—if that indeed is the purpose—shouldn't that mechanism give the family with $10,000 a year or less income the same opportunity, the same practical financial opportunity to make that choice, as the family that, say, has $30,000 a year of income?

Mr. **Whitcomb**. Well, I will have to say, Senator, that I am a product of the public schools, and I don't understand that this has anything to do with the real purpose of this Act.

Senator **Boren**. But I thought the purpose was to give choice.

Mr. **Whitcomb**. Yes, but not to give the parent money.

Senator **Boren**. Well, we are giving $300 to parents. We have to look at it that way. We are giving $300 to parents who wish to put their children in private school if they make more than $10,000 a year, on up the line. But we are not giving it to those who make less than $10,000 a year.

Mr. **Whitcomb**. But you see, we disagree at the outset on this first point, that we are "giving" them $300. We are not "giving" them $300.

Senator **Boren**. We are not giving it to the parent?

Mr. **Whitcomb**. No.

Senator **Boren**. Well, we are letting the parent have $300 of benefit. What is the tax refund, if it is not allowing the parent to have the $300 back that the parent would have paid in taxes, the $300 more into the parent's pocket than he would otherwise have under current law, right?

Mr. **Whitcomb**. I don't think there is any purpose in taking up the time of the committee on this, Senator.

Senator **Boren**. Now, I am not trying to argue this. I am just saying, do you favor or oppose the idea that a family, since 46 percent of all the black families in the United States fall below the $10,000 level—now you are in favor of giving somebody who makes $10,000 or more, who has some tax liability, the right to have $300 more in pocket, and if they choose to do so to use that $300 to put their child in a private school. Do you favor or oppose putting the same $300 into the pocket of the 46 percent of Black families in the country, if they should choose to put their children in private school?

Mr. **Whitcomb**. Well, I don't know that the color makes any difference, and I would have to say I oppose it.

Senator **Boren**. You oppose putting it——

Mr. **Whitcomb**. I oppose——

Senator **Boren**. Refundability.

Mr. **Dingman**. Senator, my response would be that I think from a political standpoint that it would sufficiently add extra clouds to the legislative process, that it would hamper the likelihood of any bill succeeding.

I think, as a practical matter, that it would have very little effect on the target population that you have talked about. The benefits of the tuition tax credit would accrue primarily to those who are in the middle income, to whom the tax refund would not make the difference as to whether or not they send their children to private schools. It would also make a difference to a small segment where they are on the economic margin, and where that little bit of difference would make the difference between a public school and a private school. But those who are in the category you are talking about, I think that even that degree of tax credit would not make the difference.

Senator **Boren**. In other words, they are not going to be able to make the choice, even if you gave them the $300?

Mr. **Dingman**. That is correct.

Senator **Boren**. Well, let me pursue that for just a minute, Mr. Dingman. And I apologize, but I think that this is such an important matter. It has been said today by someone that we think this is the most important piece of legislation to be considered by the Congress this year. I think it is the most important piece of legislation to be considered since I have been here, for the last 5 years, and maybe that's one point on which we all at least share agreement.

I asked the Secretary this morning, "Do you think that there will be a demographic shift? What kind of numbers shift and demographic shift do you presume will occur as the result of passage of this legislation?" He said, "Studies are underway."

And I gather, Mr. Dingman, from your statement just now, that you anticipate that we will mainly see—because you said the lower income people will not be in a position to make this choice, and that includes 46 percent of all black families, 37 percent of Hispanics, and so on, and I presume it would include virtually all illegal aliens and on down the list. Then I gather you would feel that those who will exercise the choice and move into private education who are now in public education will be primarily—you said primarily the middle income, middle class American, or perhaps lower middle income person, who is not in the position to make that choice.

Mr. **Dingman**. I said "those on the economic margin," and where we put that number is an arbitrary decision.

I am saying that those below $10,000 that you have talked about, most of them probably—this would not make a difference in their decision.

Senator **Boren**. All right. So the demographic change that we can expect in terms of the private sector versus the public sector will be that those who are above the economic margin or who are brought above the economic margin by this legislation, more of them will move into the private schools; whereas, those who are below the economic margin will remain in the public schools.

Mr. **Dingman**. That is probably correct, just like those below the economic margin generally cannot go out and buy large cars where those above it can.

Senator **Boren**. I understand—and not as good of cars either, isn't that correct?

Mr. **Dingman**. But there is a caveat there.

Senator **Boren**. So in other words—you know, I think this makes my point more eloquently than I could make it myself, that what we are moving toward—and that's why I am really concerned. And when I heard you say, you know—and I am concerned. I come from an Evangelical Protestant background of which I am still very much a part. I am concerned about the values in our school system;

I am concerned about discipline in our school system; I am concerned about parents in our school system and their involvement.

What really worries me is if at the margin we begin to affect more parents who carry these values and concerns for the public school and move them out of the public school, leaving in the public school those below the economic margins, those who perhaps do not have the same moral background, religious background, or values that you and I might share.

I really am concerned, and I want to address this to Governor Whitcomb for just a minute.

You talked about all of the problems in the public school, the discipline. I understand. I understand the problems as a parent of a child in a public school right now, where we have discipline problems, where you are occasionally concerned about safety and other factors and academic standards as well. I understand all of that. I am very concerned. I wish every school in this country could have some of the same solid discipline and the same kind of excellence of curriculum that we have in some of the private institutions. Thank goodness there are a few public schools left that still have that. But most of them, as has been said by the gentleman in the center, are not in the central part of the cities anymore.

But what are we going to do? What is your solution? Let me ask you this. You talked about all of the money we spend on public education. I guess when you finished and I turned to Senator Durenberger and I said very quietly—or Senator Chafee, if he was here at the time, whoever was in the chair—I think what we've just heard is a call to give up on the public schools. And that's exactly what I heard. You said, "Well, look, there are always problems. Anybody who can have the financially possible, who would want to, who shares the values of wanting to have some spiritual values and wanting to have some discipline, wanting to have the right kind of operation of a school, will move their children out of the public schools."

Now, what I am asking you is, you said you are opposed to letting these people under $10,000 have the $300 benefit, 46 percent of the black families, 37 percent—we've got all these problem children, and I gather you don't want the problem children who've got the drug problem, who have the discipline problem, you don't want them going over to the school where you want to take your own kids or to the kinds of schools that you are representing.

I can sympathize with that. People work a lifetime to get out of the ghetto and move into a better neighborhood to put their kids into a better school. It is one of the things that all of us work and strive for. But what are we to do?

I would ask each one of you, starting with Governor Whitcomb, what is your solution for what is left in the public school? And are we creating in our society deep, deep divisions, with whole groups of alienated, troubled, undereducated people?

We have talked about the test scores, too—how much better they are in the private schools than they are in the public schools. How in the world are we solving the problem addressed? I am very concerned about the moral decay in our public schools, the decay of discipline, and the rest of it. How do we address this problem by moving even more people who are at the margins out of public education?

Mr. WHITCOMB. Well, I can answer that question for you. First, the number of people in private schools are being more or less labeled as coming from the wealthy families. Now, I represent a system that is rather fundamentalist, and these are pretty low-level-of-income people, and the mothers and the fathers have to work.

I am talking about a system that has increased 30 percent each year for the past 5 years, now has half a million young people in schools, and these are not wealthy people, they are not middle income, they are low income.

I visited a school in Washington, D.C., this morning of 50, and it is not an integrated school; it is all black. These kids are from poor income families, and they are getting the kind of education with the kind of discipline that you are talking about. The answer to this is to give a little help to these families, and you will see a great many more.

Now, people forget that for the first 200 years of this country 90 percent of the people were trained in private schools. At the time that our country had its greatest gain the percentage was 90 percent. And it was only in the middle of the 1800's that it changed and the percentage turned around to where 90 percent now are being trained in the public schools. But that private system worked very well, and it will continue to.

Senator BOREN. I don't want to take a lot of time, but let me ask, Governor, what are you going to do? Are you out recruiting the child with the discipline problem or the child that has been on drugs, the child that has some kind of problem? Are you out recruiting them into your schools? Are you trying actively to bring those children who come from families who do not have—you know, it's not just a matter of money. I think far more important than dollars that a child can get are the right kind of values at home and the kind of parental concern. And they may come from these families as you talk about. They may be relatively low-income but have a solid religious value structure, concern about the children, strong concern about child rearing. That's the backbone of our country and a backbone of a State like mine.

But what are we going to do about all these others? Where do they—what do we do with them?

Mr. WHITCOMB. We are going to give them a break, give them an opportunity to go to these private schools so they will get this kind of——

Senator BOREN. With the drug problems and the juvenile—and the discipline problems?

Mr. WHITCOMB. Yes, of course. With an increase of 30 percent per year for 5 years, if these people have the opportunity they will take their children out of the schools where they are exposed to drugs, and all these other things, and they will put them in these schools, and they will have discipline, and they won't have these problems that the public school system is plagued with right now.

Senator BOREN. I would urge you to rethink your idea of being opposed, then, to those under the $10,000 mark, because that's probably where the most severe percentages of the kinds of problems you are talking about may rest, because they don't have the kind of family structures very often.

Mrs. **Simpson**. Senator Boren, I am extremely concerned because in New York City—and this is across all other large urban centers, too—the majority of these students who are in the public school system, over 70 percent in New York alone, are black or Hispanic.

Senator **Boren**. Yes.

Mrs. **Simpson**. Now, the irony of the whole thing is, how are they going to break out of this cycle when you find now that the highest percentage of unemployment is among black people and Hispanics? They can't afford to have options, and they are not being successfully educated in the public school system to where they are prepared, where they have the skills to enter into this technological area, where they can get jobs and break out of the cycle.

So I am very concerned. There are over 500 schools at any given time in New York City that frustrated black and Hispanic parents started, but are unable to continue, because of the fact they knew their kids had to be prepared.

When we are talking about this here, the problem has to be addressed to these people who are having difficulties. The only thing that would make any sense for them would be something like a voucher.

I am concerned about it. I am extremely concerned about it; I come across it every single day—parents who want to get out of the system but cannot because they don't have money. Their kids are not being prepared properly. I am tremendously concerned about that.

I am concerned also if there is really a sincere interest in helping these people to prepare. All our statistics show that the blacks score the lowest on the tests, they are not prepared for college, and other things. There are opportunities not available to them, and the reason is given that they are "unprepared."

Now, you have this vicious cycle continuing over and over again. So it is beyond tuition tax credit initiatives. Help is needed here, and I think it has to be examined, for those who are really sincere about helping these people.

Senator **Boren**. Well, I can understand the perspective of where you are speaking from, but, you know, again, I would urge you to look at the effect in some other States where we do not now have our public schools left mainly with only the minorities and with only problem children and the rest. And now are we to adopt a system that at least on the margins is going to move us toward that direction in to solve a problem preexisting to maybe move 10 or 20 percent of the students now in public school in New York, to free them so they can go to the kinds of schools that have been talked about here by others? Are we really creating a problem of much greater magnitude in other parts of the country by doing that?

I am trying to be sensitive to problems in areas like New York City, and I realize it is a tremendous problem, and that what we are talking about alone is not going to begin to get to the grips of all the problems.

Mr. **Dingman**. Senator, if I may; it has been referred to several times this morning, but the one example that we have is Minnesota, where there was not a major shift in terms of the great increase in the private schools. There would undoubtedly be some, but statistically that is the only real example we have.

I would suggest to you that another means of taking care of the problems that you have addressed relies on this matter of competition producing excellence.

Now, I know the Secretary was badgered rather substantially on proving it. I am sure that he could not prove it statistically, and I think, historically, that the private schools have not been viewed by the public school administration as any kind of a threat. They are beginning to be perceived as a threat. And I think that the very fact that they are beginning to be perceived as a threat will produce a new attitude and a new striving for greater excellence in the public sector. And I think that would then discourage people from leaving it.

Senator **Boren**. Well, that might be true to a degree, as long as we don't tilt the thing so strongly by again putting all of the requirements of taking care of the handicapped and all the other programs that we have on the public schools and not imposing them on the private. And I think that becomes a real problem.

Let me ask one last question. It is on a different subject—and I apologize to Senator Durenberger for taking so much time—and it was alluded to: the problem of will the private sector merely increase its tuition? I suppose every sector of education, both public and private, is extremely desirous of funds, needing funds, needing to upgrade quality at all times.

Is there anything in this bill that will prevent is there any restriction in this bill that will prevent the private schools from simply raising their tuitions by an amount that will at least take away part of the advantage?

In other words, if every private school in the country increased its tuition $300 after we pass this, it obviously is not going to improve the chances for choice of that person down at the lower middle income level who the $300 is going to make the difference to. If the tuitions go up that much he is still in the same box he was in before, and he won't be able to make the choice.

Is there any kind of protection built into this bill that would prevent the private sector from increasing the tuition?

Dr. **Vitullo-Martin**. No, there isn't. But you shouldn't assume that an increase of $300 in tuition would limit the choice. There are two things to be said:

First, there is a study of the Australian experience with the introduction of aid to private schools. We can enter the study into the record if you wish. It is my understanding that the effect on the private schools was to lower tuition.

The second thing to be said, and it is to be said about the problem of the $300 not getting to the lower income people too, is that $300 in an increase in tuition might well enable the private school to offer greater levels of scholarship aid which private schools, but not public schools, do offer. Public schools don't offer scholarships to people out of their district. Private schools do. They offer them to people who can't afford to enter their schools.

Seeing how these private schools operate, I would expect them to use some of this money if they did increase tuition, to recapture from the parents some of the savings, in other words. I would expect them to use that for lower income people.

Senator **Boren**. Would there be any objection, then, if we were to write into the bill a provision—and I think again this goes back importantly to the question of whether this is aid to the parent or to the school, because if the school raised its tuition $300 after the parent was given a tax break of $300, that would certainly even more clearly smack of a direct subsidy of the school by the Federal Government. Would therefore be any objection if we put a requirement, if we were to draft an amendment, saying that there would not be a tuition increase over and above the average rate of tuition increase of the preexisting private school? Of course they are going to be escalating costs, but over and above the historic increase of private tuitions, unless such funds were utilized for purposes of providing scholarships for minority, low-income, and disadvantaged persons?

Dr. **Vitullo-Martin**. But the idea is to protect the families who are attending these schools from suffering harm?

Senator **Boren**. It would be to protect the families from having all of the advantage of the choice used up and also assure that if we are going to go down the road of moving people into these school systems, that the Federal funds that are used, that are going to find their way to those schools, be utilized to expand educational opportunity for the disadvantaged and to broaden the base of those attending private schools. Would there be objection to that sort of approach? We would have to work out the details.

Mr. **Dingman**. Senator, I would object to it only on the grounds that I believe in a free market economy, and that the forces of a competitive marketplace are almost always superior to that of mandated Government controls on costs.

Senator **Boren**. But here we are talking about the flow of Federal funds, which is a little—I would agree with you. You know, I tell you what, if we were not asking for Federal funds you and I would be absolute allies all up and down the line on noninterference. But since we are asking for it——

Mr. **Dingman**. Can I come to you on other issues that don't involve Federal funds, sir? [Laughter.]

Senator **Boren**. Oh, you have, and we might agree on some of those issues. But when it comes to Federal funds, this is what concerns me. Would this be a possible approach?

Mr. **Whitcomb**. I think it is unrealistic unless you can be assured that there isn't going to be continued inflation.

Now, if President Reagan's programs continue to work, we could agree to that.

Senator **Durenberger**. All right. Thank you all very much. I appreciate the discussion, and you don't need to apologize for taking time. It is a priority issue, and it was an excellent discussion.

Our next panel consists of Althea Simmons, director of the NAACP in Washington; James Dunn, executive director of the Baptist Joint Committee on Public Affairs in Washington, and also appearing on behalf of the Americans United for Separation of Church and State; and Nathan Dershowitz, director, American Jewish Congress, New York.

Welcome to the panelists. Thank you for your patience, and we will proceed first with Ms. Simmons.

STATEMENT OF ALTHEA T. L. SIMMONS, DIRECTOR OF THE WASHINGTON BUREAU, NAACP

Ms. SIMMONS. Thank you so much, Senator.

I am Althea T. L. Simmons, Director of the Washington Bureau of the NAACP, the Nation's oldest and largest civil rights association. I appreciate this opportunity to testify on behalf of S. 528 as a representative of the black poor, many of whom are in public schools, and many of whom are members of the NAACP in the 1,800 branches in that many communities in the 50 States across the country.

Mr. Chairman, I am a product of a public school administrator, a public school teacher, and the public schools. I have taught at the elementary and secondary level and in higher education, and I served one time as NAACP's national education director, I know full well what happens with private schools that discriminate and we have a tremendous concern about discrimination in the schools.

The NAACP specifically opposes tuition tax credits in any form, in any amount, at any time, because we view tuition tax credits as an unconstitutional violation of the separation of church and state and a threat to public education.

I will limit my testimony, Mr. Chairman, to the antidiscrimination provisions of the bill. We specifically object to them. I want to be clear, however, that even should the antidiscrimination be rewritten to cure the defects we see therein, the NAACP would continue to oppose tuition tax credit legislation.

Let me briefly sammarize the antidiscrimination provisions as we see them.

The measure would allow tax-exempt private schools to submit to the Secretary of the Treasury a verfied statement that it has not permitted or followed a racially discriminatory policy in the previous year. That statement would be provided to parents to attach to their tax returns when they claim the tuition tax credit.

If the Attorney General receives a complaint alleging that the school has committed a racially discriminatory act, then he can seek a declaratory judgment from a district court in the district where the school is located, or enter a settlement agreement with the school. Any school found to be following a racially discriminatory policy could seek to modify the judgment after 1 year.

We analyzed these provisions throughout the legislation, and we found that they were inadequate for the following reasons:

The language defining "discrimination" is too limited. It does not clearly cover both discriminatory policies and practices. It is extremely possible to have a nondiscriminatory policy and have a discriminatory practice.

When I was the national education director for the NAACP, we submitted annually to IRS a list of private schools that we found were discriminating, and yet each one of them had a policy statement saying they did not discriminate. The schools asked member organizations in the black community to sign off on their nondiscriminatory policy statement which they attached to the list that they sent to the IRS.

The bill also includes an "intent" standard, and we say that we are concerned about results. Whether or not they "intend" to discriminate is not the issue; it's the results that is important.

In addition to that, the bill does not allow a private right of action. It also has time limits on various actions that are indeterminate, and it would allow a school to avoid action by the Attorney General if its discriminatory policy had been abandoned, even if it was in existence in violation of the verifiable statement to the Secretary of the Treasury.

There are also limited affirmative steps that would be required for reinstatement of eligibility.

We are also concerned that the exclusive enforcement authority is in the Attorney General.

Finally, the NAACP thinks it would be disingenuous for anyone to say that tuition tax credits are not Federal financial assistance.

Senator **Boren**. Thank you very much. [Laughter.]

Ms. **Simmons**. The testimony I have submitted for the record examines these flaws, we believe, in some detail. And I want to say again to the Senators that we reject the concept of tuition tax credits. We find totally unacceptable the so-called antidiscrimination provisions included therein.

We do believe that tuition tax credits are Federal financial assistance. And in answer to what I perceive would probably be a question from Senator Boren, we are also opposed to educational vouchers.

Thank you so much for this opportunity.

Senator **Durenberger**. Mr. Dunn?

[The prepared statement of Ms. Simmons follows:]

TESTIMONY
OF
ALTHEA T. L. SIMMONS
DIRECTOR, WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the Committee, I am Althea T. L. Simmons, Director of the Washington Bureau of the National Association for the Advancement of Colored People (NAACP), the nation's oldest and largest civil rights organization. I appreciate this opportunity to testify on S. 528.

While the Association has been actively involved throughout its 74 year history in a wide-range of civil rights issues, we are probably best recognized for our long-standing work in the area of equal educational opportunity. The NAACP realized long ago that without equal educational opportunity, minorities would never attain their rightful place in the economic and social mainstream of American life.

The NAACP strongly opposes tuition tax credits in any form, for any amount because we view tuition tax credits as an unconstitutional violation of the separation of church and state and a threat to public education.

We specifically object to the anti-discrimination provisions of S. 528. I want to be clear, however, that even should the anti-discrimination provisions be rewritten to cure the defects therein, the NAACP would continue to oppose tuition tax credits.

The anti-discrimination provisions of S. 528's would require tax-exempt private schools to submit to the Secretary of the Treasury a verified statement declaring that [illegible] has not followed a racially discriminatory policy" in the previous year; indicate whether a declaratory judgment, order or stay of such order has been entered against the school; and attest that the school meets the eligibility requirements for private schools. A copy of this statement must also be provided to parents to attach to their tax return when claiming the tuition tax credit.

Let me briefly summarize the anti-discrimination provisions. The Attorney General may seek a declaratory judgment from a district court or enter a settlement agreement with a school district when he receives a complaint alleging that a school has committed a racially discriminatory act.

A school found to have followed a racially discriminatory policy may seek modification of the judgment by filing a statement that it no longer follows a racially discriminatory policy and has not during the preceding year; attaching affidavits describing the ways such policy has been abandoned and how its non-discriminatory policy has been communicated. Once this procedure is followed, the order would be modified unless the Attorney General establishes the affidavits are false or that the school followed a racially discriminatory policy.

The NAACP's analysis of these provisions lead us to the inescapable conclusion that the language as presently couched in S. 528 is wholly inadequate. We oppose the provision for the following reasons.

- The language defining discrimination is too limited. It does not clearly cover both discriminatory policies and practices and fails to cover employment discrimination.
- The bill includes an intent standard.
- The bill grants no private right of action. The only avenue provided to complainants is petitioning the Attorney General.
- The time limits on various actions are left indeterminate.
- The bill would allow a school to avoid action by the Attorney General if its discriminatory policy "has been abandoned" even if it was in existence in violation of the school's verified statement to the Secretary of Treasury.
- Limited affirmative steps would be required for reinstatement of eligibility.
- Exclusive enforcement authority is vested in the Attorney General.
- Tuition tax credits are defined as not being federal financial assistance.

DEFINITION OF DISCRIMINATION

The definition of discrimination in the bill states that:

> "an institution follows a racially discriminatory policy if such institution refuses, on the basis of race, to (i) admit applicants as students; (ii) admit students to the rights, privileges, programs and activities generally made available to students by the school; or (iii) allow students to participate in its scholarship, loan, athletic or other programs."

A school which follows a racially discriminatory policy would be ineligible and subject to declaratory judgment proceedings if participating. The NAACP opposes this limited definition and believes that both discriminatory policies and practices should be clearly prohibited. For example, in Section 7408 (c) a school would be found by the district court to have followed a racially discriminatory policy if "such institution has, pursuant to such policy, committed a racially discriminatory act..." (emphasis added). From our reading of the bill, only discriminatory actions pursuant to a discriminatory policy would be prohibited. We know a school may practice discrimination regardless of its anti-discrimination policies.

The language of the bill would exempt from the definition of racially discriminatory policy the "failure of any educational institution to pursue or achieve any racial quota, proportion or representation in the student body." (Section 7408 (h)(2)(B) and Section 44H(c)(4)(B). Among the evidence the Attorney General or a district court should examine in determining whether a school has a racially discriminatory policy or practice which results in discrimination would be the racial composition of the student body. Yet this very evidence of discrimination would be barred from consideration.

The definition should:

- prohibit the use of any test or device which has the purpose or effect of denying admission, employment, promotion or employment benefits on the basis of race;

- prohibit any policy or practice which bars or limits student rights or participation in school program or activities;
- prohibit a school from taking any action which results in discrimination.

Should a school be found in violation, the same standards should be met by the school in its attempt to modify the judgment (Section 7408 (f))

INTENT STANDARD

The "intent" standard appears in Section 7408(c)(3) which directs a district court to declare against a school if the Attorney General establishes that the "institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy..." (emphasis added). The same language appears in Section 7408 (f)(1)(B)(iii)(III). It is the NAACP's position that a discriminatory result or effect, regardless of intent, should be the applicable standard. It does not matter whether a school intended to discriminate. If its practices or policies result in discrimination, the school should not be eligible to participate.

PRIVATE RIGHT OF ACTION

All action by private individuals or organizations against a discriminatory school would be limited to petitioning the Attorney General with such allegation. No private right of action is provided even if the Attorney General refuses to seek a declaratory judgment.

Because there is no private right of action, provisions of the bill permit the award of attorney's fees only to a school which prevails in a declaratory judgment action. Creation of a private right of action would require that attorney fee awards be authorized to private parties.

TIME LIMITS

Various time limits in the bill are left indeterminate. These include Section 7408 (b)(5)(A)(ii) where the Attorney General is directed, if he decides not to bring action or enters a settlement agreement, to "promptly" give written notice to a person making an allegation that the information on which the Attorney General's decision is based is available.

If a settlement agreement is entered into, Section 7408 (d)(3) requires the Attorney General to provide a copy to any person from whom an allegation has been received against such school, but no time frame is provided. Likewise, once an allegation is made against a school Section 7408 (b)(3) requires the Attorney Generaly to "promptly given written notice" to the school. In Section 7408 (b) (4) the Attorney General is directed to give such a school "a fair opportunity to comment..." Again, no time certain is mandated.

VIOLATION OF VERIFIED STATEMENT TO SECRETARY

The bill would allow a school to avoid action by reaching an agreement with the Attorney General. The misuse of settlement agreements by this Administration, documented in hearings before the House Judiciary Subcommittee on Civil and Constitutional Rights, makes us very leery of this provision. We are particularly concerned that a school could escape action under the language of the bill if it "abandons" its discriminatory policy even if this discriminatory policy was in effect in violation of a school's verified statement to the contrary. (Section 7408 (d)(1))

S. 528 provides no role for the petitioner in these negotiations or any subsequent legal proceedings. Further, this out-of-court process makes it very unlikely that any of these cases will ever go to judgment. It is likely to be construed as intended to secure a commitment to change a school's policy in the future rather than securing recovery of an improperly claimed credit in the past.

AFFIRMATIVE STEPS

A year after a declaratory judgment has been made against a private school such school may seek to modify the judgment. (Section 7408(f)) In order to do so, a school must file a motion in the district court containing affidavits describing the ways in which its discriminatory policy has been abandoned, the steps taken to communicate its policy of non-discrimination and averring that no discriminatory action has taken place in the preceding year. Unless proven false by the Attorney General, the order would be modified.

These provisions suffer from the same inadequacies discussed above regarding the limited definition of discrimination in this legislation, because it is upon this definition that Section 7408 (f)(1)(B) is based.

Thus, the changes suggested concerning the definition of discrimination should also be used to revise this section. It should also include that a school would be unable to modify the order if it has engaged in any conduct sufficient to constitute a violation of the Constitution or any federal statute proscribing discrimination.

EXCLUSIVE AUTHORITY OF THE ATTORNEY GENERAL

Section 44H (c)(3) grants the Attorney General exclusive authority to investigate allegations of discrimination. There are a number of problems with this provision. According to S. 528, the Attorney General could act only upon receipt of an allegation of discrimination. It is thus left to an individual to complain. It is our view that the dangers of the denial of equal educational opportunity require ongoing oversight and monitoring and the sole burden should not be upon an aggrieved individual to complain.

The bill requires eligible private schools to be 501(c)(3) tax-exempt institutions. The issue of tax exemptions to private schools which discriminate is currently before the Supreme Court. Should the Court confirm the Department of Treasury's responsibility in this area, concurrent authority to investigate should be granted in this legislation to the Secretary of Treasury in conjunction with its ongoing monitoring and enforcement in the 501(c)(3) area.

In addition, we urge the Committee to grant concurrent authority for monitoring to the Office of Civil Rights (OCR) at the Department of Education which monitors and enforces civil rights in the public schools. OCR has an established compliance enforcement mechanism which should not be shut out of civil rights enforcement at private schools should this legislation be enacted. OCR is already involved and experienced at enforcing civil rights laws in an educational setting. This issue is closely linked with Section 5 of S. 528 which exempts tuition tax credits from the definition of federal financial assistance.

FEDERAL FINANCIAL ASSISTANCE

Section 5 of S. 528 declares that:

> "Tax credits claimed under Section 44H of the Internal Revenue Code of 1954 shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits."

As the Committee is aware, it is through the definition of federal financial assistance that the provisions of the various civil rights act are made applicable to recipients and programs and activities conducted with federal funds. Since the definition of discrimination provided in S. 528 is so limited, the effect of this provision is to allow private schools to receive funds without meeting the lawful obligations which such receipt requires. It is our contention that this provision is a blatant attempt to place these schools beyond the reach of federal civil rights laws.

CONCLUSION

In summary, the anti-discrimination provisions of S. 528 are wholly inadequate. They would not prevent discrimination from occurring at participating private schools. They would, in fact, by Section 5, put these schools beyond the reach of existing civil rights laws and subject them only to the limited and inadequate provisions contained in this legislation.

The NAACP rejects the concept of tuition tax credits and finds totally unacceptable the so-called anti-discrimination provisions of the proposed legislation.

Finally, Mr. Chairman and members of the Committee the NAACP would like to underscore its contention that the Congress must be concerned with the actions which result in discrimination.

STATEMENT OF JAMES M. DUNN, EXECUTIVE DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

Mr. DUNN. Thank you, Mr. Chairman, and distinguished members of the committee.

I would like to request that the testimony prepared by Americans United for the Separation of Church and State, for whom I appear today as a board member, as well as the the Baptist Joint Committee on Public Affairs' testimony, be admitted for the record.

Senator DURENBERGER. Without objection it will be made part of the record.

Mr. DUNN. I welcome the opportunity to share with you some insights of a large segment of the religious community. The enactment of a tuition tax credit plan would be a giant step toward a dual system of pauper schools and private schools in this country.

"Public money for public purposes," which you have heard here today, is a good motto, and the failure to meet the public policy test is the greatest fault of tuition tax credits.

Elitists have always been cool to the idea that poor children should have the same teaching as children of privilege. One Rhode Island farmer physically threatened Henry Bernard—I wish Senator Chafee were here right now—the State's chief spokesman for common schools, way back early, for preaching such a horrible heresy as the partial confiscation of one man's property to educate another man's children.

Gradually, the common school concept prevailed. Thousands of dedicated Americans paid the price to give us the public schools of today, because they believed that public education conducted in the context of the community as a whole rather than in a sanitized and separated part of it was an essential ingredient in teaching the give and take of democracy.

The Baptist Joint Committee which I represent works for the 27 million Baptists who are members of the eight major Baptist Conventions and Conferences in the United States. Because of the democratic structure of individual Baptist Churches and Conventions, we don't purport to speak for all Baptists; however, our cooperating conventions have spoken strongly in opposition to tuition tax credits.

For example, the Southern Baptist Convention, the largest non-Roman Catholic religious body in the United States, passed a resolution that Senator Boren entered into the record this morning, restating its opposition to tuition tax credits.

The American Baptist Churches in the United States of America actively oppose tuition tax credits for all nonpublic and church sponsored schools and colleges.

The Baptist opposition stems from a variety of concerns:

First, it's unconstitutional. No one can escape the conclusion that public funds would benefit the sponsoring church, and those schools which have, by their own attestation, a religious mission. The net result is that the taxpayer is forced to subsidize religion, and overwhelmingly one brand of religion, at that, because 75 percent of the private and parochial schools in the United States of America belong to one church, the Roman Catholic Church.

Second, it's regressive. It would offer aid to people who need it least. The poor who may want their children in available church schools would not be able to afford them, even with the tax aid, and would have to fall back on the public schools.

In fact, Dr. James Coleman, the author of this famous report that has been cited several times here today, praising parochial schools, says, and I quote, that he "fears that tuition tax credits would mostly aid wealthier families who pay substantial income taxes and do little or nothing for disadvantaged minority students." That's the Coleman report.

Such welfare for the well-off would offer a choice only for those with money.

Next, it's expensive. Estimates vary depending on the exact plan. And I have noticed that the Department of Education this morning didn't evidence any hard research on the escalation of cost or the growth of the schools.

A Wake Forest study done by a Dr. Frey at Wake Forest indicates that there is an absolute certainty of escalation of enrollment and escalation of cost which would make it also inflationary. It's an incentive from Federal policy that would make for wild escalation, and it's sort of interesting that this kind of uncontrollable entitlement is being advocated today in the very context of those who continue to insist that they are opposed to these entitlement programs.

Next, it's unfair. The large school rather than the small school is favored. The older, established school over against the new school is favored. And, as the young woman from Kansas pointed out today, there is a distinct regional warp for the Northeast quarter of the country. In fact, the overwhelming percentage of schoolchildren who would benefit from tuition tax credits would be in Cleveland, Chicago, Philadelphia, Milwaukee, New York, and Boston.

To appeal for fairness because parents of private and parochial schoolchildren pay both taxes and tuition is to advance an odd principle of tax equity. The elderly, the singles, and the childless support all sorts of public services in general and don't whimper around asking for tax credits. It's divisive.

This sort of State support for church schools would arouse the competitive worst in church folks. They would be going after the Federal dollar like hungry piglets at the trough.

Americans are already sharply divided on this issue. Every single State referendum for tuition tax credits or any other form of parochaid has failed. There have been 15 of them in the last 17 years.

Just last November, voters in Massachusetts and California overwhelmingly rejected all kinds of parochaid.

It's destructive of the public schools. The future of public education is at stake. As the report released this week reveals, our Nation may be, without a greatly improved system of public education, in serious danger. But this reinforces once again the fundamental concept that we dare not divert public education dollars. With the education of all children in crisis, if indeed it is, we can't afford the luxury of allowing tax dollars to be misappropriated for private and parochial schools.

A Government subsidy would place a bounty on the head of schoolchildren for withdrawal from the public schools.

Private schools also remove from the common schools—listen to this interesting little juicy quote—"the interest of the most influential segment of the community. The common school ceases to be visited by those whose children are in private schools." This is a self aggravating process. As public interest declines, so will school quality, and more children will be withdrawn by parents who can purchase their education elsewhere. "Thus would the cycle continue until the public schools were pauper schools." Horace Mann said that in 1857, but it could have been written in 1983.

It's undemocratic. We can't control what happens in private and parochial schools.

It's dishonest to use parents tax credit for a conduit that gets tax moneys into schools which are permeated with religion, and by their own avowal primarily on a religious mission. It's a tad shady. It's a subterfuge that is unworthy of the Congress of the United States.

It's also intrusive. We have seen all of the Government regulations discussed here, and Government regulations would inevitably and legitimately follow an alternate school system in which the public has such a vested interest.

Well, the bell rang. [Laughter.]

Senator DURENBERGER. We do have your full statement, too.

Mr. DUNN. The Internal Revenue would have to monitor every institution.

Senator DURENBERGER. With all its juicy quotes.

Mr. DUNN. With all its juicy quotes.

I think it might be a good idea if we even entered into the record this morning's Herblock cartoon—we're into visual aids in this administration—"Ronald has some very original thoughts. The public schools have problems; what's the answer? Cut Federal aid to public schools, and have the United States pay people to put their kids in private schools." It says it more graphically than lengthy testimony.

Senator DURENBERGER. Thank you, Mr. Dunn.

[The prepared statement of Mr. Dunn follows:]

TESTIMONY OF

DR. JAMES DUNN

for

AMERICANS UNITED FOR SEPARATION
OF CHURCH AND STATE

Mr. Chairman and Members of the Committee:

My name is James Dunn. I am a member of the Board of Americans United for Separation of Church and State. We appreciate this opportunity to testify on S.528, tuition tax credit legislation.

Americans United is a 35 year-old organization dedicated exclusively to maintaining and promoting the free exercise of religion and its First Amendment corollary separation of church and state. We draw our membership from individuals of conservative and liberal political persuasions as well as the full spectrum of religious faiths.

It is this concern and regard for the First Amendment guarantees of religious liberty that has prompted our request to testify on this proposed legislation. While our interests center primarily in the area of constitutional aspects of this bill, I will also address the economic and public policy problems surrounding it.

Our analysis of S.528 shows it to be unconstitutional. We arrive at this conclusion based on examination of year after year of Court decisions establishing a clear historical record that tax aid, given directly or indirectly to parochial or church-related schools, is aid to a church and, therefore, unconstitutional.

The Court has allowed only incidental aids, or auxiliary aids, which directly serve as benefit to all children equally and not the institutions. Aid of this type includes loans of textbooks, diagnostic services, school lunch programs, though it has been established in other Supreme Court cases that this aid may not go to schools which practice racial or other types of discrimination.

Beginning with the Lemon v. Kurtzman decision in 1971, the Court set down a three-part test of constitutionality for any plan to aid a parochial or church-related school. The law in question must reflect a clearly secular legislative purpose; it must have a primary effect that neither advances nor inhibits religion, and it must avoid excessive government entanglement with religion.

A series of decisions during the seventies has established a clear judicial precedent that the type of aid S.528 promotes is unconstitutional.

In the 1973 Nyquist case the Court ruled unconstituional a New York state tuition tax credit plan similar to that proposed in S.528. It said that since the benefits go "to parents who send their children to sectarian schools, their purpose and inevitable effect is to aid and advance those religious institutions."

Further, there is no question that this tax aid advances religion since at least 85 percent of all nonpublic schools are church-related. The fact that the aid may be viewed as incidental in amount in light of high tuition rates does not alter its intent to aid religion. The fact that the aid is routed through the parents is also incidental. Parents serve merely as conduits of that aid, which eventually goes to the schools. We believe the child benefit theory could not pass constitutional muster in this case.

Historically the American people have not shown much support for aid to parochial schools. For approximately the past 15 years Americans from Alaska to New York have consistently voted against such aid.

While postsecondary education has been treated differently by the courts from aid to elementary and secondary schools, we believe tuition tax credits are not an appropriate form of aid. The majority of institutions of higher education agree with our opinion.

Beyond this, the genesis and promotion of this bill represents a certain confluence of religious and political interests. As the Supreme Court pointed out in the 1971 Lemon ruling, "in a community where such a large number of pupils are served by church-related schools, it can be assumed that state assistance will entail considerable political activity. Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniqeus to prevail....

"Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect."

This bill could so entangle religion and politics that two centuries of progress in our country with regard to religious liberty and church-state separation could be obliterated.

Furthermore, to deny that denominational elementary and secondary schools do not discriminate by religion is to deny their very purpose -- to remain religiously homogeneous. Giving public funds to such schools through tuition tax credits would result in federal government subsidization of sectarian division and divisiveness in education. The result of this could only be a decline in interfaith and community harmony and a socio-economic crisis in education.

Beyond the obvious constitutional problems this proposed bill presents, there are numerous other problems it could create which I would like to focus on now.

One such problem is the cost of this proposed legislation. Projected costs range as high as 2.5 billion dollars. This is lost revenue from nonstimulative credits, which do not generate new revenues, and which are uncontrollable and inflationary. It seems unconscionable to us that Congress would pass such legislation at a time when such drastic cuts are being made in the education budget.

Another problem involves the issue of regulation of parochial schools. There is no amount of federal funds that can be taken by these schools that will not be accompanied by increased regulations. Yet we have heard more outcries in recent years from the same people who are asking for the aid, complaining that government is regulating their churches and their schools.

This legislation, if passed, would certainly require new policing efforts by some agency, such as the Internal Revenue Service or the Department of Education. If you will recall, there were great protestations and eventual legislation following attempts by the IRS in 1979 to remove the tax exempt status of nonpublic schools which discriminate by race or which are racially out of balance.

Government bureaucracy and red tape would evolve around the inevitable regulations that would come with tuition tax credits and would entangle government with religion, precisely what our founding fathers were trying to prevent with the religion clause of the First Amendment.

The public schools were founded on the concept of a free universal system of education for every child, regardless of economic status, race, religion or ethnic background. The institution of public schools has been the foundation that has helped evolve a strong middle class in our country and a chance for every citizen in this country to better him or herself.

Beyond that who decides how much is enough? If 50 percent tax credit is constitutional, then why not a tax credit for the full amount of tuition?

The amounts of the credits could escalate because parents would be encouraged to remove their children from public schools and place them in nonpublic schools to take advantage of the tax credit. This could force the costs of programs in private schools to increase, thus encouraging those schools to ask for a greater tax credit. Those schools could also raise their tuition rates to take full advantage of the credit.

The result could be an educational civil war between the private and public schools for public funds.

At the same time the private schools are currently not required to follow minimum educational standards established for public schools. This aid would foster an elitist caste system of education in this country with the public schools becoming the dumping ground for those not acceptable to the private schools, such as the poor, the handicapped, and others.

That is why the idea that tuition tax credits will foster so-called needed competition between the public and private schools is so flawed. The roles of the public and private sectors in education are very different. Private schools do not have to follow standards of teacher qualifications, salaries, curricula, services, etc.

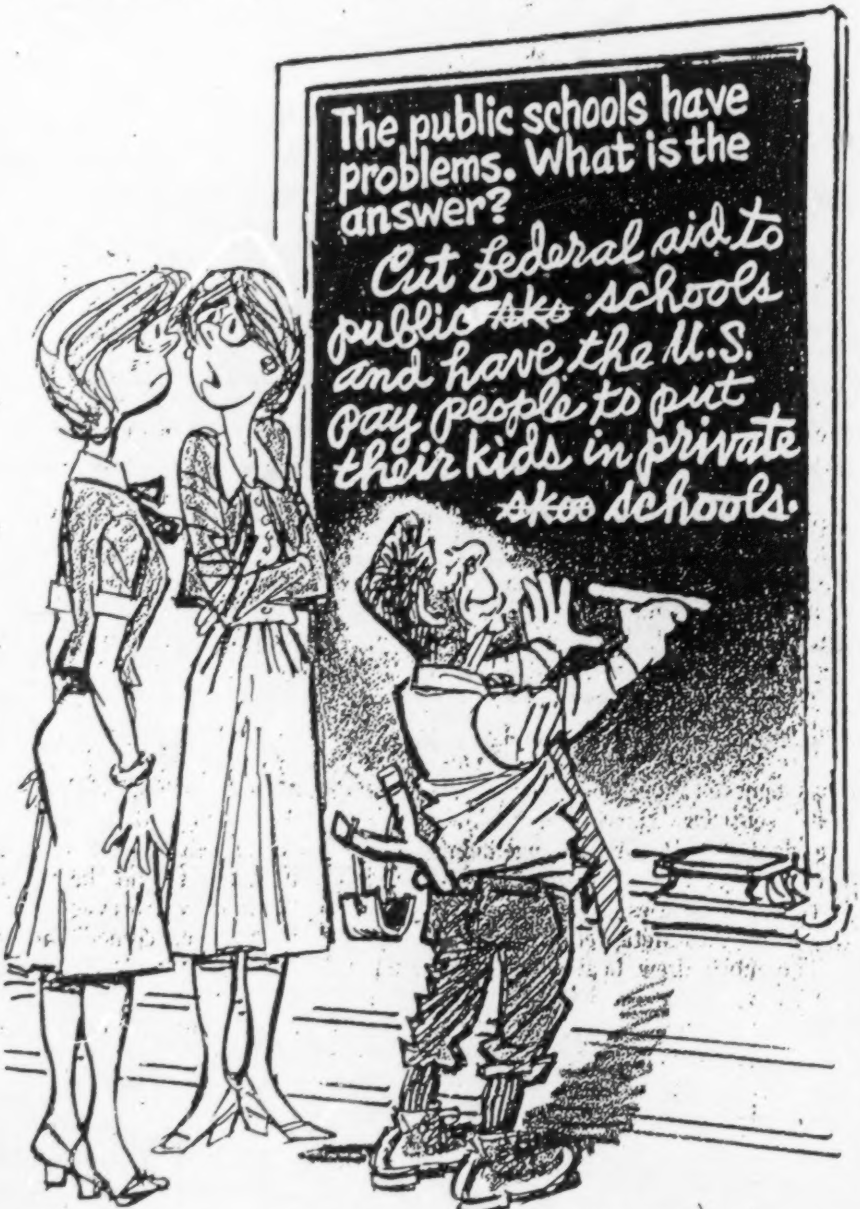
Beyond that the local citizenry would have no say in what happened to the private schools which are privately controlled far from the eye of the public meetings we all know to be the hallmark of public schools and their boards.

We understand the problems that parents, who choose to send their children to nonpublic schools, have in paying high tuition rates. But the answer is not to provide public funds to those special interest schools. It is bad economic and public policy because it could create chaos in our educational system and destroy our long tradition of separation of church and state and the right to privately and freely exercise our religious beliefs. Americans United asks this Subcommittee to oppose S.528.

[illegible]

THURSDAY, APRIL 28, 1983

"RONALD HAS SOME VERY ORIGINAL THOUGHTS"


The public schools have problems. What is the answer?
Cut federal aid to public ~~sks~~ schools and have the U.S. pay people to put their kids in private ~~skoo~~ schools.
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Testimony of James M. Dunn
Executive Director, Baptist Joint Committee
on Public Affairs

at the Hearing on S. 528

before
Senate Committee on Finance
April 28, 1983

Mr. Chairman, distinguished members of the Committee. I am James M. Dunn and I welcome the opportunity to share with you some insights that are the often-stated views of a large segment of the religious community. The enactment of a tuition tax credit plan would be a giant step toward guaranteeing a dual system of pauper schools and private schools in this country.

"Public money for public purposes" is a good motto. The failure to meet the public policy test is the greatest fault of tuition tax credit plans. Elitists have always been cool to the idea that poor children should have the same teaching as children of privilege. One Rhode Island farmer physically threatened Henry Barnard, the state's chief spokesman for common schools, for "preaching such a horrible heresy as the partial confiscation of one man's property to educate another man's children."[1]

Gradually the common school concept prevailed. Thousands of dedicated average Americans have paid the price to give us the public schools of today. "They believed that public education conducted in the context of the community as a whole rather than in a sanitized and separated part of it was an essential ingredient in teaching the give-and-take of democracy."[2]

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[1] Vivian T. Thayer, The Rise of the School in American Society (New York: Dodd, Mead, 1969), p. 10.

The Baptist Joint Committee which I represent works for the 27 million Baptists who are members of the eight major Baptist conventions and conferences in the United States. Because of the democratic structure of individual Baptist churches and conventions, we do not purport to speak for all Baptists; however, several of our cooperating conventions have spoken strongly against tuition tax credit legislation.

For example, the Southern Baptist Convention, the largest non-Roman Catholic religious body in the United States, passed a resolution in June 1982 restating its opposition to tuition tax credits.

> **WHEREAS**, The Congress of the United States is considering legislation to give taxpayers a tax credit (that is, a direct subtraction from one's tax bill) for tuition payments, and
>
> **WHEREAS**, The effect of such legislation would be of most benefit to those who could afford to finance their children's attendance at private schools including elite schools, and
>
> **WHEREAS**, Most private elementary and secondary schools are related to churches and exist to serve the religious mission of sponsoring churches, and
>
> **WHEREAS**, Tuition tax credit legislation carries the potential of financing private education at the expense of public education, and

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[2] Penrose St. Amant, "The Christian and Public Education," Therefore . . ., Christian Life Commission of the Baptist General Convention of Texas, Spring, 1982, p. 2.

WHEREAS, The attorney general of the United States has issued an advisory opinion that such legislation is of doubtful constitutionality under the First Amendment, especially with regard to tuition paid to elementary and secondary schools, and

WHEREAS, The Baptist Joint Committee on Public Affairs has opposed such legislation because of its threat to the principle of separation of church and state.

Therefore, be it Resolved, That we call upon President Ronald Reagan to reconsider his support of the tax credit legislation now under consideration by Congress.

Be it further Resolved, That we, messengers to the Southern Baptist Convention, meeting in New Orleans, Louisiana, on June 17, 1982, register our opposition to all tuition tax credit legislation pending in Congress, urge the Baptist Joint Committee on Public Affairs to continue to oppose such legislation, and express our concern over such legislation's threat to the First Amendment guarantees of non-establishment of religion and the free exercise of religion.

The American Baptist Churches in the U.S.A. have also voted to "actively oppose tuition tax credits for all non-public and church-sponsored schools and colleges" (American Baptist resolution by the General Board in 1980).

Baptist opposition to tax credit legislation is so widespread because it stems from a variety of concerns. What are these concerns?

It's **unconstitutional**. Senator Ernest F. Hollings says, "in 1973 the U. S. Supreme Court's Nyquist decision reaffirmed the position of our Founding Fathers by striking down a New York State tuition tax credit plan because it violated the First Amendment's 'establishment clause.'"

No one can escape the conclusion that public funds benefit the sponsoring church. The net result is that the taxpayer is forced to subsidize religion, overwhelmingly one brand of religion at that. Thomas Jefferson wrote, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical."

It's **regressive**. It would offer aid to people who need it least. The poor who may want their children in available church schools will not be able to afford them, even with tax aid, and must fall back on public schools. Dr. James Coleman, author of a report praising parochial schools, "fears that tuition tax credits would mostly aid wealthier families, who pay substantial income taxes, and do little or nothing for disadvantaged minority students."

Such welfare for the well-off would offer a choice only for those with money.

It's **expensive**. Estimates vary depending on the exact plan. Even the current plan approved by the Senate Finance Committee last year would cost almost $1 billion annually once it became operative.

It's **inflationary**. Such an incentive from federal policy would make for wild escalation in the cost of private education. The New York Times predicts that the "cost of this uncontrollable entitlement could rise spectacularly."

It's **unfair**. Larger rather than smaller church schools would be favored. The parochial systems already in place would have a distinct advantage. There is even a regional warp for the Northeast quarter of the country. The largest percentages of school children in church schools are in Cleveland, Chicago, Milwaukee, Philadelphia, New York and Boston.

To appeal for fairness because "parents of private and parochial school children pay both taxes and tuition" is to advance an odd principle of tax equity. The elderly, singles, and couples without children support public services in general and don't whimper for tax credits to evade supporting public education.

It's **divisive**. This sort of state support for church schools would arouse the competitive worst in church folks. They would root for tax credit advantage like an overlarge brood of hungry piglets.

Americans are already sharply divided on the issue. Every state referendum for tuition tax credits has failed. Just last November voters in Massachusetts and California overwhelmingly rejected tuition tax credits.

It's **destructive** of the public schools. The future of public education is at stake. As the report released this week reveals, our nation without a greatly improved system of public education is in serious danger. This reinforces once again the fundamental concept that we dare not divert public education dollars, dollars which come from the public and for which the public at large has a responsibility. With the education of all children in crisis, we cannot afford the luxury of allowing tax dollars to be misappropriated for private and parochial education.

A government subsidy would place a bounty on the head of school children for withdrawal from the public schools. Joseph A. Califano, Jr., former Secretary of Health, Education and Welfare, described tuition tax credits as a "devastating blow to public school education in this country," a proposal that "stands the American tradition of public education on its head."

Private schools also remove from the common schools "the interest of the most influential segment of the community....The common school ceases to be visited by those whose children are in private schools. Such parents decline to serve on committees. They have no personal motive to vote for or advocate any increase of the town's annual appropriation for schools; to say nothing of the temptation to discourage such increase in indirect ways, or even to vote directly against it." This is a self-aggravating process. As public interest declines so will school quality, and more children will be withdrawn by parents who can purchase better education elsewhere. "Thus would the cycle continue until the public schools were pauper schools." Horace Mann (1796-1859) of Massachusetts wrote these words in 1857; they could have been written in 1983.[3]

It's undemocratic. There would be a sort of taxation

[3] Quoted by St. Amant, Ibid., p. 3.

without representation if tax credit maneuvering prevailed. Decisions regarding private and parochial schools would be made beyond the reach or influence of the taxpayer. Public schools have their problems responding to the 16,000 local school boards. But, that is democracy.

It's **dishonest**. To use the parents' tax credit for a conduit to get tax monies into schools which are permeated with religion is a tad shady. Constitutional tests have made it clear that it is not legal to do something indirectly that is directly forbidden. Such a subterfuge is unworthy of Congress.

It's **intrusive**. Government regulations would inevitably and legitimately follow an alternate school system in which the public had such a vested interest. T. A. Shannon, National School Boards Association, contends that, "without strict regulation, there would be no way to prevent the subsidies provided through tax credits from helping schools that endorsed values of communists, the Ku Klux Klan or other groups."

One great strength of private and parochial education is found in the freedom from government intervention. It would be sad to see that freedom swapped for a mess of tax credit pottage. Although the proposed bill seeks to preclude supervision of church-related schools, there is no escape from the fact that, when the federal government legislates tax benefits, it also imposes obligations. See the bill's provisions barring benefits to students attending schools which are not non-profit or which discriminate on the basis of race, color or national origin. The Internal Revenue Service would be obliged to monitor each institution named in income tax returns to make certain it was non-profit, and the U. S. Attorney General would have to undertake enforcement of the anti-bias provision, a task which will involve government agencies in extensive supervision of institutions receiving government aid.

President John F. Kennedy understood the perils of public support for church-related schools. He said, on Sept. 15, 1960, "I believe in an America where the separation of church and state is absolute . . . where no church or church school is granted any public funds or political preference."

Conclusion

We urge this panel to oppose President Reagan's tuition tax credit proposal.

BAPTIST JOINT COMMITTEE ON
PUBLIC AFFAIRS
200 Maryland Avenue, N.E.
Washington D.C. 20002
(202) 544-4226

STATEMENT OF NATHAN DERSHOWITZ, DIRECTOR, COMMISSION ON LAW AND SOCIAL ACTION, AMERICAN JEWISH CONGRESS, NEW YORK, N.Y.

Mr. DERSHOWITZ. Thank you.

I would like to thank the Committee for inviting me to testify today, and I would also like to commend the Committee. The area of tuition tax credits is one that I have been concerned about for a number of years, and I think these hearings have been the most interesting hearings held in that period. The probing questions that have been asked are important questions. And I think the record of this hearing will be a very valuable product.

I am the director of the Commission on Law and Social Action of the American Jewish Congress. I am also the general counsel to PEARL, which is an umbrella organization consisting of groups that support public education and religious liberty.

I was invited to testify on this issue during the 97th Congress and I will not reiterate the points that I made at that time. What I would like to do now is deal with three points and possibly supplement my testimony to address a number of questions that were raised today.

The first point that I would like to make deals with the fact that the bill, as I understand it, deals extensively with the problem of students attending institutions which have racially discriminatory policies. These provisions of the bill would not, however, become operational until the Supreme Court rules in the *Bob Jones* case, or until there is a subsequent act of Congress.

The bill seems to defer to the Supreme Court's acting in the area of Bob Jones, and yet, for some strange reason, there is no deference to the Supreme Court on the issue of tuition tax credits.

In addition to the *Bob Jones* case, there is also pending before the U.S. Supreme Court the case of *Mueller* v. *Allen*. And the case of *Mueller* v. *Allen* is one of a line of cases that have dealt with the question of tuition tax credits, and the Supreme Court, at least in the earlier cases, has held tuition tax credits unconstitutional. And *Mueller* at least raises the argument, the claimed argument, of equality. It is argued that the tuition tax credit scheme at issue in *Mueller* is applicable to both the private schools and the public schools in Minnesota. That's one of the arguments as to why the scheme is constitutional.

That argument cannot be made with respect to the bill that is being considered today. The bill as written only applies to the private schools.

Senator BOREN. Does Minnesota apply it to both?

Mr. DERSHOWITZ. Minnesota applies it to both. And one of the strongest arguments that was made was that it applies to both; and as a matter of fact, Senator Packwood, I believe it was at the last hearing, emphasized that as a strong distinction between the case that is presently before the Supreme Court and some of the prior decisions.

The second point that I would like to make involves the slippery slope, and it is a followup to some of the questions that have been raised. The power of Congress to give or withdraw tax credits, depending upon whether a private school or an institution complies with public policy, is a very dangerous power, and I think it may well lead to the destruction of the very institutions that proponents of the bill are seeking to defend.

It seems reasonable in the area of racial discrimination to say to a sectarian school that it may not use or take advantage of a tax credit proposal. But would it be reasonable for Congress to say to a sectarian school that tuition tax credits are not available if it discriminates on the basis of sex, or on the basis of religion? What happens if a school discriminates against the handicapped? What happens if it has a program which the majority of Americans think is inconsistent with their philosophy as to what should be included within the schools?

Once you start down the slippery slope, it seems to me that all restrictions that are applicable to the public schools can, and possibly should, be applicable to the private schools.

Permitting the Federal Government to inject itself into sectarian schools by this means is very dangerous. Jewish schools have flourished in this country, as have other religious schools, because of the strong belief on the part of parents and religious leaders that they have an absolute right to teach their children in a manner consistent with their religion. They have that right; but once they receive Federal funding, restrictions and responsibilities necessarily must follow and, once they do, the schools will not be allowed to continue practicing as they presently do.

Let me make two more quick points:

First, with respect to section 5, which is the section of this bill which says that it is not Federal financial assistance, it reminds me of the story about Abraham Lincoln.

Someone asked Abraham Lincoln how many legs a cow would have if you called its tail a leg? And he said; "Four. It doesn't matter what you call it. A tail is a tail, and a leg is a leg." Saying this is not Federal financial assistance does not change the situation.

Now, if I may, I would like to just answer the question about nonrefundability.

I think if you had a refundability provision it certainly would be more equitable, in the sense that it would apply equally to people whether they are wealthy or poor. But I think it is also clear, at least under the U.S. Supreme Court decisions in *Nyquist* and *Lemon,* that that would demonstrate how grossly unconstitutional the provisions are. What you would basically be doing is saying to somebody, "We will reward you for sending your child to a religious school. Here is $300." And that makes the unconstitutionality of the act so clear.

The other thing I don't understand is, with Senators Dole and Packwood and Moynihan all supporting refundability, why the bill that was introduced does not have a refundability provision. And the answer may be that the administration has come up with an $800 million figure. I wish someone would ask the administration what the figure would be with a refundability provision included. If it is inequitable—they say $800 million—equitable and unconstitutional, how much would it cost? I think those questions should be asked.

Thank you very much.

Senator **Durenberger**. I think the answer to that, from past experience with child care tax credits and with investment tax credits, is that this administration just has a philosophical problem with the notion of refundability, since it was raised in a Presidential election some years ago, and it somehow smacks of welfare and implies—what was that? You know, the guaranteed——

Senator **Boren**. The negative income tax?

Senator **Durenberger**. The negative income tax, or something. I think that is probably closer to the answer; although I am sure there may be a dollar problem there, also.

Dave, would you go first?

Senator **Boren**. Sure.

First, I want to compliment the panel on the discussion and I think that the constitutional issues that have been raised and the way they have been raised have certainly been appropriately discussed, and also the dangers to the private sector. You know, it seems to me that sometimes people can be very shortsighted, and it is very puzzling to me, as I heard the spokesman for the Moral Majority—it's somewhat shocking to me to hear those statements being made from people who have traditionally been very, very concerned about the intrusion of Government into such private matters as religious belief.

I think that anyone who does not believe that Federal controls will not flow along with Federal funds has not read the history of any use of Federal funds since the beginning of this Republic. And it seems very, very strange to me that for the sake of $300 one is apt to forget all of this history and be willing to take the grave risks imposed that controls will follow. And it's not only that I think controls will follow, that that will be harmful to the private sector and to free expression, but I think also that they must follow and that it is only appropriate that they follow if the funding comes, because I for one certainly intend to follow along to make sure if public funds are used that the discriminatory section is strengthened, that we do not discriminate on the basis of race, or of sex, or of creed, or of physical condition, handicap or any other, or of condition of prior problems, be they disciplinary or any other.

So I think there are a number of us that intend to follow along that line. It's the old thing of having your cake and eating it, too, wanting absolute nonintervention, the absolute right to absolute freedom, and yet at the same time wanting the public to have tax funds coerced from them and then doled out without any exercise of responsibility for how those funds are used. And that kind of inconsistency isn't going to be allowed to exist—it never has been for long periods of time in this country. And the controls will inevitably follow.

I wanted to go back and ask Mrs. Simmons—in your statement, and I followed it carefully, and I think that you are right, I understand you to say that it does appear that the definition of discrimination provided in the bill does not cover both discriminatory policies and discriminatory practices.

For example, in section 7408(c), a school will be found by the Court to have followed a racially discriminatory policy if "such institution has, pursuant to such policy, committed a racially discriminatory act."

Isn't it possible, therefore, that a school could act in a discriminatory manner even though it might have a stated policy that on its face is not discriminatory, and therefore it would not violate, even though it had the discriminatory practice, it would not violate the letter of section 7408(c) as now written? Isn't that correct?

Mrs. SIMMONS. That's correct.

Senator BOREN. The other section—and you mentioned this, but I think we should put it into the record because I think it will be of great concern to others on this committee who are at least at this point in time espousing support for this legislation but who have been sincere supporters of civil rights in the past, and I think we ought to put it into the record so that they can carefully read it and reflect upon changes that need to be changed in this draft.

In two sections of the bill an intent standard appears, at least it seems to me this way, section 7408(c)(3) and section 7408(f)(1)(B)(III). I think we ought to put all of that in the record so those folks in the private sector will get used to reading all of these sections that are going to be applying to their private sectors in the future.

For example, a court would declare against a school if the Attorney General establishes that "the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy." We got into that last year over the Voting Rights Act. Shouldn't a discriminatory result or effect, regardless of intent, be the applicable standard? And shouldn't it not be a matter of whether a school intended to discriminate or not, if in fact it is discriminating or if the pattern of policies it's followed result in actual discrimination?

Mrs. SIMMONS. I concur wholeheartedly with you, Senator. We believe that. And we certainly believe that unless you include practices along with the policies, it's not worth the paper that it's written on.

Senator BOREN. Well, it certainly seems to me that we have an intent test here, spelled out here in at least two sections, and that we do have the problem of policy versus practice, as you have already indicated it, and we have already had a discussion of section 5 and the fact that it is ludicrous on its face by stating that the tuition tax credits are not Federal financial assistance. And I think we can understand that I think the very apt story has been told about the cow and the four legs.

But it perhaps has another pernicious effect here, too, as well as being a misstatement of the fact. My reading of the bill shows that there is no private right of action. The only course of action for someone discriminated against by a private school, talking in terms of racial discrimination, would be to petition the Attorney General. But since section 5 of the bill declares that tuition tax credits are not Federal financial assistance—it says that. The civil rights laws, presumably, would therefore not be applicable, and therefore the avenue for private right of action might be foreclosed.

So I would ask again Mrs. Simmons' opinion. I think you have stated it. In your opinion, is there a private right of action in this bill? And do you think that because of this language in section 5 that it might jeopardize the individual even as they attempt to contact the Attorney General or complain to the Attorney General because of this declaration that it's not Federal aid, which might foreclose some kind of movement or action under the Civil Rights Act?

Mrs. **Simmons**. That is correct. There is no private right of action in there. The provisions of the bill will permit the award of attorneys fees only to a school which prevails in a declaratory judgment.

Senator **Boren**. Right.

Mrs. **Simmons**. And the creation of a private right of action would require that attorneys fees awards be authorized to private parties. We certainly see that this is a very serious defect in the legislation.

And of course NAACP takes the position that if you feed at the public trough, you have a responsibility for accountability.

Senator **Boren**. Well, I agree with that.

I want to thank the panel, needless to say, since the statements that have been made by all three panelists strongly agree with my own philosophical position on this matter. I think they have stated it extremely well and with great insight.

Seriously, we do appreciate your taking the time to provide thoughtful testimony to us from the various perspectives that it has been presented. Yes, sir?

Mr. **Dershowitz**. Senator, if I may, the New York Law Journal that came out literally last week is also very much in accord with your views on the unconstitutionality, and I would like to just bring it to your attention. It not only concludes that the Supreme Court should come down with a decision that way, but it really suggests that Congress too should cease all consideration of proposals for a national tuition tax credit benefit program, and that such a program would violate the establishment clause of the Constitution.

Senator **Boren**. I would like to ask unanimous consent that that article which you have cited from the Law Journal appear in the record. If you will present it to the clerk, it will be included in the record of these hearings. I think it is very important because of what I think were some of the misstatements of the law that were presented earlier today.

[The article from the New York Law Journal follows:]

LAWS RESPECTING AN ESTABLISHMENT OF RELIGION: AN INQUIRY INTO TUITION TAX BENEFITS

INTRODUCTION

Parents face a choice when it comes to the education of their children. They may send them to tax-supported public schools, or they may decide to forgo that opportunity and enroll their children in nonpublic schools.[1] Those who opt for the latter course will likely be saddled with additional expenses, not the least of which is tuition. In recent years, several states have enacted, and members of Congress have proposed, legislation to offset tuition expenses by granting tax benefits in the form of reimbursements, credits, or deductions.[2]

In deciding on such courses of action, Congress and the state legislatures must take care not to offend the Constitution. The first amendment prohibits Congress and, through the fourteenth amendment, the states[3] from making any "law respecting an establishment of religion, or prohibiting the free exercise thereof."[4] Together, the establishment clause and the free exercise clause embody the doctrine of separation of church and state. Tuition tax benefits warrant scrutiny under the establishment clause[5] because the vast majority of nonpublic school students—eighty-four percent, according to the most recent federal statistics—attend religiously affiliated schools.[6] The Supreme Court has determined that "insofar as such benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions."[7] Tuition tax legislation, like most measures implicating the establishment clause, must pass a three-part test developed by the Supreme Court. First, the statute must have a secular legislative purpose (the "purpose" test); second, it must have a primary effect that neither advances nor inhibits religion (the "primary effects" test); and third, it must avoid excessive government entanglement with religion (the "entanglement" test).[8]

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[1] The term "nonpublic" will be used throughout this Note to designate both parochial and nonsectarian private schools on the elementary and secondary levels.

[2] For a discussion of these benefits and the differences between them, see text accompanying notes 65-67 infra.

[3] See, e.g., Everson v. Board of Educ., 330 U.S. 1, 8 (1947); Murdock v. Pennsylvania, 319 U.S. 105, 108 (1943); Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).

[4] U.S. Const. amend. I.

[5] Some commentators have urged that consideration of both religion clauses is essential to a proper determination of any case arising under them, arguing that the free exercise and establishment clauses were not meant to operate independently of each other. See, e.g., P. Kurland, Religion and the Law 16-18 (1962); L. Tribe, American Constitutional Law § 14-7, at 833-34 (1978); Choper, The Religion Clauses of the First Amendment: Reconciling the Conflict, 41 U. Pitt. L. Rev. 673 (1980).

The Supreme Court, however, has not adopted such an approach. Instead, it deems each case either an establishment clause case or a free exercise case; this in turn dictates the analysis to be used. This practice has resulted in two distinct lines of cases under the religion clauses that are often anomalous. For example, in Thomas v. Review Bd., 450 U.S. 707 (1981), the Court held on free exercise grounds that a Jehovah's Witness must not be denied unemployment benefits if he gave up his job because of his religious beliefs. Justice Rehnquist's dissent chided the majority for increasing the tension between the two religion clauses and demonstrated that under the establishment clause analysis the board's decision would have to be upheld. 450 U.S. at 722-27

(Rehnquist, J., dissenting). See also Sherbert v. Verner, 374 U.S. 398, 414-17 (1963) (Stewart, J., concurring) (sustaining a Seventh Day Adventist's challenge to denial of unemployment benefits).

The cases concerning government aid to parochial schools have been deemed establishment clause cases. The courts have rejected arguments that the free exercise clause mandates government funding of church-related schools' secular functions. See Brusca v. Missouri ex rel. State Bd. of Educ., 332 F. Supp. 275, 278-79 (E.D. Mo. 1971) (state constitutional provision and statutes prohibiting public aid to parochial schools are not violative of free exercise), aff'd mem., 405 U.S. 1050 (1972).

More importantly, the Supreme Court has not accepted the free exercise argument that, while government does not have to support such schools, it should be allowed to if it so chooses:

> It is . . . true that a state law interfering with a parent's right to have his child educated in a sectarian school would run afoul of the Free Exercise Clause. But this Court repeatedly has recognized that tension inevitably exists between the Free Exercise and the Establishment Clauses. . . . As a result of this tension, our cases require the State to maintain an attitude of "neutrality," neither "advancing" nor "inhibiting" religion. . . . However great our sympathy for the burdens experienced by those who must pay public school taxes at the same time that they support other schools because of the constraints of "conscience and discipline," and notwithstanding the "high social importance" of the State's purposes, neither may justify an eroding of the limitations of the Establishment Clause now firmly emplanted.

Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 788-89 (1973) (citations and footnote omitted). While acknowledging the drawbacks of the Supreme Court's schismatic approach to cases arising under the religion clauses, this Note applies the Supreme Court's current mode of analysis.

[6] National Center for Education Statistics, U.S. Dep't of Education, Digest of Education Statistics 49 (1982). See text accompanying notes 159-60 infra.

[7] Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 793 (1973). The Court also asserted that "the fact that aid is disbursed to parents rather than to the schools is only one among many factors to be considered." Id. at 781. See also Abington School Dist. v. Schempp, 374 U.S. 203, 230 (1963) (Douglas, J., concurring) ("What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery.").

[8] Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). A different analysis is used for a statute that is not denomination-neutral but rather prefers or discriminates against one religion or class of religions. In such a situation, the statute "must be invalidated unless it is justified by a compelling governmental interest and unless it is closely fitted to further that interest." Larson v. Valente, 456 U.S. 228, 247 (1982) (citations omitted).

The most important of these criteria for evaluation of tuition tax benefits is the primary effects test. In 1973, the Supreme Court struck down New York legislation granting tuition tax benefits to parents whose children attended nonpublic schools, holding that "the effect of the aid is unmistakably to provide desired financial support for nonpublic, sectarian institutions."[9] The decision did not necessarily foreclose more broadly based tuition aid programs, however,[10] and lower courts considering such plans have reached inconsistent results. Currently before the Supreme Court is an Eighth Circuit decision upholding a Minnesota statute that grants tax deductions for tuition and related expenses incurred by all parents, whether their children attend public or nonpublic schools.[11] A similar Rhode Island statute was found unconstitutional by the First Circuit in 1980.[12]

This Note will argue that the Minnesota statute violates the establishment clause and should be struck down in accordance with the First Circuit decision. In addition, the recent congressional proposals will be shown to be unconstitutional.[13] Part I of the Note will examine the historical and analytical framework of the case law, discussing the background and formulation of the three-part establishment clause test and its application to government aid programs for nonpublic schools. Part II, after describing both the Minnesota and congressional legislation, will discuss the tuition tax benefit cases decided by the Supreme Court. It will then apply the Court's analysis to *Mueller v. Allen*, the Eighth Circuit decision upholding the Minnesota statute, and to Congress' tuition tax proposals.

I

ESTABLISHMENT CLAUSE ANALYSIS: DEVELOPMENT AND APPLICATION

Over fifty years ago, the Supreme Court recognized that parents have the right to send their children to parochial schools to satisfy state compulsory attendance laws.[14] Because of the constitutional prohibition against any establishment of religion, however, it is not clear in what ways and to what extent government may aid such schools.[15] Since 1947, the Supreme Court has upheld the following state aid programs for elementary and secondary nonpublic schools: reimbursing the cost of transportation to and from public and nonpublic schools;[16] lending students secular, nonideological textbooks;[17] providing diagnostic, therapeutic, and remedial services;[18] and reimbursing schools for carrying out state-mandated testing and scoring.[19] At the same time, the Court has struck down aid programs covering field trip transportation;[20] salaries for parochial school teachers;[21] maintenance and repair costs;[22] instructional equipment, supplies, and materials;[23] and some forms of tuition benefits.[24]

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[9] Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 783 (1973) (footnote omitted). For a discussion of this case, see text accompanying notes 89-97 infra.

[10] The Court said it made no judgment about the permissibility of "some form of public assistance (e.g., scholarships) made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited." Id. at 783 n.38.

[11] Mueller v. Allen, 676 F.2d 1195 (8th Cir.), cert. granted, 103 S. Ct. 48 (1982).

[12] Rhode Island Fed'n of Teachers v. Norberg, 630 F.2d 855 (1st Cir. 1980).

[13] In reaching this conclusion, this Note will discuss only the constitutional arguments; the policy considerations concerning tuition tax benefit programs are beyond its scope. As one lower court has noted, the state's interest in a vital nonpublic school system may be constitutionally irrelevant: "However much we may approve, however much we may respect, however much we

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may admire the role of non-public education, we cannot substitute such approval, respect, and admiration for the plain language of the First Amendment of the United States Constitution." Wolman v. Essex, 342 F. Supp. 399, 419 (S.D. Ohio) (three-judge court) (footnote omitted), aff'd mem., 409 U.S. 808 (1972).

[14] See Pierce v. Society of Sisters, 268 U.S. 510, 518 (1925).

[15] See Abington School Dist. v. Schempp, 374 U.S. 203, 229 (1963) (Douglas, J., concurring) ("*The most effective way to establish any institution is to finance it.*")

[16] See Everson v. Board of Educ., 330 U.S. 1 (1947).

[17] See Meek v. Pittenger, 421 U.S. 349, 359-62 (1975); Board of Educ. v. Allen, 392 U.S. 236 (1968). The holding of *Allen* has not been liberally extended. See note 43 infra.

[18] See Wolman v. Walter, 433 U.S. 229, 241-48 (1977). Such services included testing and therapy for speech, hearing, and psychological impairments; services for physically handicapped and emotionally disturbed children; and general counseling. See id. at 241, 244 n.12. To avoid entanglement problems, the legislation provided that the therapeutic and remedial services would not be performed on school grounds. Instead, public employees would conduct the treatment in other facilities. Id. at 244 n.12. A New Jersey statute providing for similar auxiliary services to take place on school premises had been found to violate the establishment clause on entanglement grounds. Public Funds for Pub. Schools v. Marburger, 358 F. Supp. 29, 39-42 (D.N.J. 1973), aff'd mem., 417 U.S. 961 (1974).

[19] See Committee for Pub. Educ. & Religious Liberty v. Regan, 444 U.S. 646 (1980). The program upheld in *Regan* contained an auditing provision which was adopted as a corrective measure after the predecessor statute was invalidated in Levitt v. Committee for Pub. Educ. & Religious Liberty, 413 U.S. 472 (1973).

[20] See Wolman v. Walter, 433 U.S. 229, 252-55 (1977).

[21] See Lemon v. Kurtzman, 403 U.S. 602, 619-22 (1971).

[22] See Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 774-80 (1973).

[23] In Meek v. Pittenger, 421 U.S. 349, 366 n.16 (1975), the Court found direct loans of such items unconstitutional on the authority of Public Funds for Pub. Schools v. Marburger, 358 F. Supp. 29 (D.N.J. 1973), aff'd mem., 417 U.S. 961 (1974). This type of aid cannot be saved even when the loan recipients are not the schools themselves but rather the parents and students. Wolman v. Walter, 433 U.S. 229, 250 (1977) ("The equipment is substantially the same; it will receive the same use by the students; and it may still be stored and distributed on the nonpublic school premises.").

[24] See text accompanying notes 87-111 infra.

A superficial examination of these lists will not readily reveal any definitive line of demarcation between permissible and impermissible aid.[25] As the Court has admitted, the three-part test "has been clearly stated, if not easily applied, by this Court in recent Establishment Clause cases."[26] For example, transportation to and from parochial schools, which enhances the opportunity to receive religious instruction, is constitutional; yet field trip transportation, which is arguably no more sectarian than other bus rides, is not.

These results can best be reconciled by recognizing that the Court has found it advisable to draw bright lines at the border between constitutional and unconstitutional aid.[27] In the main, the Court has adhered to the view that "[s]ubstantial aid to the educational function of [parochial] schools . . . necessarily results in aid to the sectarian school enterprise as a whole."[28]

The first case to attack a government aid program for nonpublic schools under the establishment clause was *Everson v. Board of Education*, decided in 1947.[29] The Court, by a bare majority, upheld a New Jersey law authorizing reimbursement to parents of money spent transporting their children to and from school. The beneficiaries of the program included parents with children in public schools as well as those with children in private and parochial schools. The Court found the aid to be within the state's constitutional authority but said that it "approache[d] the verge of that power."[30]

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[25] Even the Court has described its line as a "blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship." Lemon v. Kurtzman, 403 U.S. 602, 614 (1971). Justice Stevens, who has advocated a prohibition on all types of subsidies to nonpublic schools, wrote in dissent in Committee for Pub. Educ. & Religious Liberty v. Regan, 444 U.S. 646, 671 (1980), that the majority's approval of the program at issue was "but another in a long line of cases making largely ad hoc decisions about what payments may or may not be constitutionally made to nonpublic schools."

[26] Meek v. Pittenger, 421 U.S. 349, 358 (1975). In Committee for Pub. Educ. & Religious Liberty v. Regan, 444 U.S. 646 (1980), the Court conceded:

> [O]ur decisions have tended to avoid categorical imperatives and absolutist approaches at either end of the range of possible outcomes. This course sacrifices clarity and predictability for flexibility, but this promises to be the case until the continuing interaction between the courts and the States—the former charged with interpreting and upholding the Constitution and the latter seeking to provide education for their youth—produces a single, more encompassing construction of the Establishment Clause.

Id. at 662; see also Note, Rebuilding the Wall: The Case for a Return to the Strict Interpretation of the Establishment Clause, 81 Colum. L. Rev. 1463 (1981) (proposing a "strict neutrality" standard that would forbid any form of aid to religious institutions unless entirely incidental to broader programs); Note, Government Neutrality and Separation of Church and State: Tuition Tax Credits, 92 Harv. L. Rev. 696 (1979) (proposing an analysis based primarily on notions of government neutrality toward religion, rather than the current emphasis on separation of government and religion).

[27] See Lemon v. Kurtzman, 403 U.S. 602, 612 (1971) ("In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.' ") (citation omitted).

[28] Meek v. Pittenger, 421 U.S. 349, 366 (1975).

[29] 330 U.S. 1 (1947).

The Court developed its test in the context of measures that, rather than granting aid to nonpublic schools, attempted to place religious practices and values into the public school system.[31] In 1963, the Court held, in *Abington School District v. Schempp*, that laws requiring public schools to begin each day with Bible readings were unconstitutional.[32] In so deciding, the Court distilled from previous cases the first two parts of its current establishment clause test:

> [W]hat are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.[33]

While the purpose test is often fatal to measures involving religion in the public schools,[34] it is not a significant obstacle to government aid to nonpublic schools. As long as the legislature has espoused a secular purpose, the Court has deemed the test satisfied.[35] Indeed, even legislation devoid of any mention of purpose, secular or otherwise, has been upheld when the Court has "found" a secular purpose.[36]

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[30] Id. at 16.

[31] See, e.g., Engel v. Vitale, 370 U.S. 421 (1962) (recitation of an official prayer to begin school day found unconstitutional); Zorach v. Clauson, 343 U.S. 306, 308-09 (1952) (release-time program allowing students to leave their public schools to receive religious instruction at parochial facilities is constitutional as it involves "neither religious instruction in public school classrooms nor the expenditure of public funds"); Illinois ex rel. McCollum v. Board of Educ., 333 U.S. 203 (1948) (invalidating program permitting 30 minutes of religious instruction a week by outside religious teachers in the public schools during regular school hours).

[32] 374 U.S. 203 (1963) (Pennsylvania and Maryland statutes violative of establishment clause). Recently there has been renewed interest in allowing religion in the public schools. See, e.g., N.J. Pub. L. No. 1982, ch. 205 (Dec. 16, 1982), N.Y. Times, Jan. 11, 1983, at A1, cols. 2-4 (providing for daily minute of silence); N.Y. Times, Jan. 26, 1983, at A14, col. 4 (President Reagan, in 1983 State of the Union address, calling for constitutional amendment allowing voluntary school prayer). While the constitutionality of moments of silence is uncertain, see Note, Daily Moments of Silence: A Constitutional Analysis, 58 N.Y.U. L. Rev. 364 (1983), *Engel* and *Schempp* leave no option but constitutional amendment for legitimating school prayer. See Karen B. v. Treen, 653 F.2d 897 (5th Cir. 1981) (statute authorizing voluntary student- or teacher-initiated prayer at the beginning of the school day is unconstitutional), aff'd mem., 455 U.S. 913 (1982).

[33] 374 U.S. at 222.

[34] The purpose test is at its strongest in the public school cases. Even an unequivocal statement of secular purpose will not help a statute that places religion in the public schools. See, e.g., Stone v. Graham, 449 U.S. 39, 41 (1980) (statute requiring posting of the Ten Commandments in public schools prefaced by a legislative finding that " '[t]he secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States' "); Epperson v. Arkansas, 393 U.S. 97, 103 (1968) (statute forbidding teaching of evolution in public schools "for the sole reason that it is deemed to conflict with a particular religious doctrine").

Once past the purpose test, legislation must satisfy the second prong of the establishment clause test: its primary effect must neither advance nor inhibit religion. To avoid such an effect, the statute must either contain a mechanism to ensure that the aid will not be used for religious purposes[37] or to provide aid that by its nature cannot be diverted to such uses.[38] For this reason, assistance that substantially aids the educational function of religious schools is prohibited, even if the aid is designated for the schools' secular functions.[39]

Parochial school aid programs may survive this test if the advancement of religion is an incidental rather than a primary effect.

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[35] The Court in Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 773 (1973), said that "we need touch only briefly on the requirement of a 'secular legislative purpose.' . . . We do not question the propriety, and fully secular content, of New York's interest in preserving a healthy and safe educational environment for all of its schoolchildren." Similarly, in Lemon v. Kurtzman, 403 U.S. 602, 613 (1971), the Court found that "the statutes themselves clearly state that they are intended to enhance the quality of the secular education in all schools covered by the compulsory attendance laws. . . . [W]e find nothing here that undermines the stated legislative intent; it must therefore be accorded appropriate deference." See also L. Pfeffer, God, Caesar, and the Constitution 285 (1975); F. Sorauf, The Wall of Separation 366 (1976); L. Tribe, supra note 5, § 14-8, at 836.

[36] See Walz v. Tax Comm'n, 397 U.S. 664, 672-74 (1970). The weakness of the purpose test does not mean that the courts are blind to potential sectarian legislative motives. While deference is given to a legislature's avowed purpose, the primary effects analysis often serves to unmask unconstitutional governmental intent. By demonstrating that the effect of a statute is to aid an overwhelmingly sectarian class, the statute's challengers are in addition illustrating that such an effect was intended by the legislature. See Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 783 (1973). The Court has observed that a statute may fail the establishment clause test "if it can be demonstrated that its purpose—evidenced either on the face of the legislation, in conjunction with its legislative history, or in its operative effect—is to use the State's coercive power to aid religion." McGowan v. Maryland, 366 U.S. 420, 453 (1961).

[37] Compare Levitt v. Committee for Pub. Educ. & Religious Liberty, 413 U.S. 472 (1973) (reimbursement for costs of testing and scoring is unconstitutional) with Committee for Pub. Educ. & Religious Liberty v. Regan, 444 U.S. 646 (1980) (successor statute with audit procedure is constitutional).

[38] See, e.g., Wolman v. Walter, 433 U.S. 229, 244 (1977) (upholding state-provided diagnostic services; Everson v. Board of Educ., 330 U.S. 1, 17-18 (1947) (transportation to and from school).

[39] Meek v. Pittenger, 421 U.S. 349, 365-66 (1975) (such aid "necessarily results in aid to the sectarian school enterprise as a whole"). It is the nature of the aid, not the form it takes, that is controlling. Aid to the educational function of a nonpublic school is unconstitutional whether granted to the schools or the students, and whether granted in services or tax benefits; even direct cash reimbursements can be constitutional if granted in payment for discrete, purely secular functions, see Committee for Pub. Educ. & Religious Liberty v. Regan, 444 U.S. 646, 658 (1980) (reimbursement for the scoring of standardized tests).

"Effect" may be measured by two criteria: the nature of the aid and the nature of the class that benefits from it.[40] The Supreme Court's early cases focused primarily on the first factor. In *Board of Education v. Allen*,[41] the Court found that a New York statute requiring local boards to lend secular textbooks to all secondary school students, including those in parochial schools, did not violate the purpose or primary effects test. The Court later said that *Everson* and *Allen* "recognize that sectarian schools perform secular, educational functions as well as religious functions, and that some forms of aid may be channeled to the secular without providing direct aid to the sectarian. But the channel is a narrow one, as [*Everson* and *Allen*] illustrate."[42] In more recent cases, proponents of government aid to parochial schools have argued that the principle of *Allen* permits provision of materials other than textbooks. These proponents also assert that *Everson* and *Allen* established that aid is constitutionally acceptable if given directly to the parents and students, rather than to the schools. The Court has rejected both these analyses, warning that aid approaching the verge of constitutionality should not be relied upon as a "platform for yet further steps."[43]

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[40] The line between a primarily sectarian effect and one that is merely incidental has never been precisely drawn, at least in analysis of the benefited class. It can be argued that if over 50% of the benefits of a program accrue to identifiably sectarian institutions, the program should fall. While this factor could present great difficulties in other contexts, see note 140 and accompanying text infra, the fine distinctions need not be made in the context of government assistance to parochial schools. With 84% of nonpublic school students in the nation attending parochial schools, see text accompanying notes 159-60 infra, the primarily sectarian character of the class falls well within the prohibition of the primary effects test. See Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 768 (1973) (impermissible primary effect when 85% of class of schools affected are sectarian).

[41] 392 U.S. 236 (1968). Supplying textbooks to all school children had been the subject of an earlier Supreme Court case, Cochran v. Louisiana State Bd. of Educ., 281 U.S. 370 (1930). The aid was attacked not under the establishment clause but as a deprivation of property under the due process clause of the fourteenth amendment. As in *Allen*, the statute was upheld.

[42] Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 775 (1973). The Court went on to note that

> the provision of such neutral, nonideological aid, assisting only the secular functions of sectarian schools, served indirectly and incidentally to promote the religious function by rendering it more likely that children would attend sectarian schools and by freeing the budgets of those schools for use in other nonsecular areas. But an indirect and incidental effect beneficial to religious institutions has never been thought a sufficient defect to warrant the invalidation of a state law.

Id.

[43] Lemon v. Kurtzman, 403 U.S. 602, 624 (1971). The Court addressed the first argument in Wolman v. Walter, 433 U.S. 229 (1977), concluding that

> *Board of Education v. Allen* has remained law, and we now follow as a matter of *stare decisis* the principle that restriction of textbooks to those provided the public schools is sufficient to ensure that the books will not be used for religious purposes. In more recent

In 1970, in *Walz v. Tax Commission*,[44] the Court enunciated the third and final prong of the three-part establishment clause test: government must avoid excessive entanglement with religion. In *Walz*, upholding property tax exemptions for religious institutions, the Court stated that the nature of the aid as well as the form it takes determines whether the resulting involvement between church and state is permissible.[45]

The Court developed the entanglement test more fully the following year in *Lemon v. Kurtzman*,[46] invalidating state subsidy of parochial school teachers' salaries, and explained two aspects to the entanglement problem. First, there is administrative entanglement, which will fell a statute if "comprehensive, discriminating, and continuing state surveillance" would be required to ensure that the aid program does not take on a sectarian taint.[47] The analysis focuses on the form of the aid.[48] The Court scrutinizes the way in which the government proposes to provide a given service to determine the resulting relationship between the religious institution and the state. If the administration of the aid program would involve "pervasive restrictions"[49] upon the operation of a religiously affiliated facility or would require the state to engage in investigation to classify the school's activities as either religious or secular, the aid program will fall.[50]

The second aspect of entanglement is the problem of political divisiveness, which the *Lemon* Court explained in dicta[51] after it

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> cases, however, we have declined to extend that presumption of neutrality to other items in the lower school setting.

Id. at 252 n.18. In another decision, three Justices suggested that *Allen* might not withstand scrutiny under the entanglement test. See Meek v. Pittenger, 421 U.S. 349, 378 (1975) (Brennan, J., joined by Douglas and Marshall, JJ., concurring and dissenting).

As to the argument that *Everson* and *Allen* permit aid granted directly to parents and students, the Court has responded that those cases "make clear that, far from providing a *per se* immunity from examination of the substance of the State's program, the fact that aid is disbursed to parents rather than to the schools is only one of many factors to be considered." Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 781 (1973).

[44] 397 U.S. 664 (1970). For a fuller discussion of this case, see text accompanying notes 143-46 infra.

[45] See id. at 674-75.

[46] 403 U.S. 602 (1971).

[47] Id. at 619. See also Walz v. Tax Comm'n, 397 U.S. 664, 675 (1970).

In Lemon v. Kurtzman, 403 U.S. 602, 615 (1971), the Court set out the test as an examination of "the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority." Id.

[48] Lemon v. Kurtzman, 403 U.S. at 616.

[49] Id. at 619.

[50] Id. at 621-22.

[51] Id. at 622-24. The Court explained:

> A broader base of entanglement . . . is presented by the divisive political potential of these

invalidated the programs at issue on the ground of administrative entanglement. The Court said that religious concerns fostered by some aid programs will find their way into the political process, thereby intensifying "[p]olitical fragmentation and divisiveness on religious lines."[52] While the aid at issue in *Lemon* extended to all religious schools, the Court seems to have limited its application of the political divisiveness concept to statutes that involve denominational preference or discrimination, whether favorable to a particular sect or not.[53] Statutes that aid all religions, as in the parochial school aid cases, do not inherently pose the "risk of politicizing religion."[54] Thus the discussion below will be limited to the administrative aspect of the entanglement test.

When seen in conjunction, the primary effects test and the entanglement test have been described as "Scylla and Charybdis";[55] it is difficult to satisfy one without violating the other. To pass the primary effects test a statute must ensure that the government aid does not support religion. However, the safeguards necessary to avoid that effect must not involve excessive entanglement between church and state.[56] That is, verification procedures that guarantee the secular effect of an aid program might, in their operation, impermissibly entangle the government in the operation of the parochial schools.[57]

In the decade following *Walz*, the Court ruled on many state laws aiding elementary and secondary parochial schools.[58] Distinc-

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> state programs. In a community where such a large number of pupils are served by church-related schools, it can be assumed that state assistance will entail considerable political activity. . . . It would be unrealistic to ignore the fact that many people confronted with issues of this kind will find their votes aligned with their faith.
>
> . . . [P]olitical division along religious lines was one of the principal evils against which the First Amendment was intended to protect.

Id. at 622.

[52] Id. at 623.

[53] See Larson v. Valente, 456 U.S. 228, 252-55 (1982). *Larson* concerned a Minnesota statute that required charitable organizations to register with the state if they solicited more than 50% of their funds from nonmembers. Id. at 230. The Court found, partly on the basis of legislative discussions, that the statute discriminated against some religions, specifically the Unification Church. Id. at 254-55.

[54] Walz v. Tax Comm'n, 397 U.S. at 695 (separate opinion of Harlan, J.).

[55] Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 788 (1973).

[56] Lemon v. Kurtzman, 403 U.S. 602, 614 (1971) ("The objective is to prevent, as far as possible, the intrusion of either into the precincts of the other.").

[57] See id. at 619-22.

[58] See cases cited in notes 17-23 supra.

During the 1970's, the Court also ruled on a number of cases involving government aid to colleges and universities and found those institutions less religion-pervasive than elementary and secondary schools—thus indicating that aid which is permissible for colleges could fail the primary effects test if it were channeled to elementary or secondary schools. See Roemer v. Board tions were made according to whether the aid was in theory and in practice granted for secular functions and could not contribute to or be diverted to the religious functions of the schools.[59] For example, the Court noted that although a parochial school teacher spends a significant percentage of his or her time teaching purely secular subjects, the state cannot pay a corresponding percentage of the teacher's salary; a teacher's dual function as disseminator of religious beliefs as well as secular educational information is, in practical terms, incapable of separation.[60] On the same reasoning the Court held that, since information gathered on field trips is disseminated by the teacher, state funding for the transportation costs of such functions is prohibited.[61] Governing all these decisions was the following theme:

> The church-related elementary and secondary schools that are the primary beneficiaries of [the aid program] typify . . . religion-pervasive institutions. The very purpose of many of those schools is to provide an integrated secular and religious education; the teaching process is, to a large extent, devoted to the inculcation of religious values and belief.[62]

Thus, as it stands now, any aid that has a primary effect of supporting the religious educational function of parochial schools, or

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of Pub. Works, 426 U.S. 736 (1976) (plurality opinion) (state aid to private colleges, including church-affiliated schools); Hunt v. McNair, 413 U.S. 734 (1973) (issuance of revenue bonds for a sectarian college); Tilton v. Richardson, 403 U.S. 672 (1971) (plurality opinion) (federal construction grants for church-related institutions of higher education). The Court noted that "[o]ur holdings are better reconciled in terms of the character of the aided institutions" than the nature of the aid. *Roemer*, 426 U.S. at 766. The Court also found that "college students are less impressionable and less susceptible [than younger students] to religious indoctrination." *Tilton*, 403 U.S. at 686 (footnote omitted). See also Giannella, Religious Liberty, Nonestablishment, and Doctrinal Development: Part II. The Nonestablishment Principle, 81 Harv. L. Rev. 513, 583-90 (1968).

Despite this recognized dichotomy, at least one measure considered by the 97th Congress attempted to tie tax benefits for parochial school tuition to benefits for colleges and universities. See S. 550, 97th Cong., 1st Sess., 127 Cong. Rec. S1514-16 (daily ed. Feb. 24, 1981) (tuition tax credits to parents of children at the elementary, secondary, or postsecondary level); note 79 infra.

[59] See, e.g., Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 780 (1973) (the state must be able to guarantee, without excessive entanglement, that public funds will be used "exclusively for secular, neutral, and nonideological purposes").

[60] Lemon v. Kurtzman, 403 U.S. 602 (1971). The Court asserted: "We cannot ignore the danger that a teacher under religious control and discipline poses to the separation of the religious from the purely secular aspects of pre-college education. The conflict of functions inheres in the situation." Id. at 617. The Court admonished that "[t]he State must be certain, given the Religion Clauses, that subsidized teachers do not inculcate religion." Id. at 619.

[61] Wolman v. Walter, 433 U.S. 229, 253-55 (1977).

[62] Meek v. Pittenger, 421 U.S. 349, 366 (1975).

that excessively entangles government in such function, violates the establishment clause. The Court has approved state provision for services such as administration and scoring of standardized examinations[63] and testing for physical and emotional disabilities by public employees on private school grounds,[64] as these functions involve only incidental and indirect benefits to the schools and minimal entanglement between church and state.

In recent years, government attempts to aid nonpublic schools have often taken the form of tax benefits for tuition payments. There are three main categories of such benefits: reimbursements or grants, whereby the government makes payments directly to parents who incur tuition expenses;[65] tax credits, whereby the dollar amount set by statute is subtracted from the tax owed, giving the taxpayer a benefit equal to the amount of the allowance;[66] and tax deductions, whereby the amount allowed is subtracted from adjusted gross income, benefiting the taxpayer to the extent that the reduction in taxable income reduces his or her ultimate tax liability.[67] The courts have invalidated various forms of these benefits; of all the state tuition tax programs to be challenged in the courts, only Minnesota's has withstood constitutional scrutiny.

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[63] See Committee for Pub. Educ. & Religious Liberty v. Regan, 444 U.S. 646 (1980); Wolman v. Walter, 433 U.S. 229, 238-41 (1977).

[64] See Wolman v. Walter, 433 U.S. at 241-44 (1977).

[65] See Sloan v. Lemon, 413 U.S. 825, 828 (1973) (Pennsylvania statute providing $75 reimbursement for each child in nonpublic elementary school and $150 for each in nonpublic secondary school, not to exceed tuition paid); Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 780 (1973) (New York program giving low-income parents grants of $50 for each elementary school child and $100 for each high school child, not to exceed 50% of tuition paid); see also People ex rel. Klinger v. Howlett, 56 Ill. 2d 1, 5-6, 305 N.E.2d 129, 131 (1973) (statute authorizing grants to low-income parents of nonpublic school children in the amount equal to the state's contribution to the public school district for the child's education). All of these programs were found unconstitutional.

Grant and reimbursement programs are not necessarily connected with or part of tax statutes. The parents receive payments merely upon the filing of a separate form attesting to the amount expended for tuition. This Note, however, will refer to these benefits as "tax benefits."

[66] See Kosydar v. Wolman, 353 F. Supp. 744 (S.D. Ohio 1972) (three-judge court) (invalidating an Ohio statute allowing tax credit of $90 per student for tuition expenses in nonpublic and some public school programs), aff'd mem. sub nom. Grit v. Wolman, 413 U.S. 901 (1973).

[67] See Rhode Island Fed'n of Teachers v. Norberg, 630 F.2d 855, 857 (1st Cir. 1980) (deductions of up to $500 per pupil enrolled in elementary school and up to $700 for each enrolled in secondary school); Public Funds for Pub. Schools v. Byrne, 590 F.2d 514, 516 (3d Cir.) (New Jersey statute authorizing a $1000 deduction for each child attending a nonpublic elementary or secondary school), aff'd mem., 442 U.S. 907 (1979). Both aid programs were found unconstitutional.

[68] Act of April 23, 1955, ch. 741, sec. 1, § 290.09(19), 1955 Minn. Laws 1148, 1154 (codified

II

THE CONSTITUTIONALITY OF TUITION TAX BENEFITS

A. *The Current Issues: State and Federal Legislation*

1. *Minnesota's Program and* Mueller v. Allen

Since 1955, Minnesota has allowed tax deductions for elementary and secondary school expenses.[68] All parents may deduct actual expenses incurred for tuition, transportation, and textbooks (including secular instructional materials and equipment), not to exceed $500 for elementary school dependents and $700 for secondary school children.[69]

In *Rhode Island Federation of Teachers v. Norberg*, the First Circuit found a virtually identical Rhode Island program to be unconstitutional.[70] The fact that all parents were eligible for the benefit, whether their children attended public or nonpublic schools, was described by the district court as "mere window dressing."[71] The district court carried out a de facto analysis, looking to the effect of the statute, rather than a de jure analysis, which would look no further than the facial neutrality of the statute. The First Circuit endorsed that approach.[72] Under a de facto analysis, the First Circuit concluded, the primary effect of the tuition benefit program was to aid an overwhelmingly sectarian class; parents of public school students constituted an insignificant portion of the recipients.[73]

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at Minn. Stat. Ann. § 290.09(22) (West Supp. 1983)) (effective for taxable years beginning after Dec. 31, 1954).

[69] Minn. Stat. Ann. § 290.09(22) (West Supp. 1983). Amendments in 1976 added the provision for textbooks, defined to include instructional materials and equipment, and raised the deduction from $200. See Act of March 8, 1976, ch. 37, § 1, 1976 Minn. Laws 93, 93 (codified at Minn. Stat. Ann. § 290.09(22) (West Supp. 1983)) (effective for taxable years beginning after Dec. 31, 1974).

The Minnesota legislature attempted in 1971 to give nonpublic school parents a choice of tax relief. Instead of claiming a deduction under § 290.09, they could claim a tax credit for education costs, including tuition. The highest state court found the statute unconstitutional under the authority of the Supreme Court's decision in *Committee for Pub. Educ. & Religious Liberty v. Nyquist*. Minnesota Civil Liberties Union v. State, 302 Minn. 216, 224 N.W.2d 344 (1974), cert. denied, 421 U.S. 988 (1975). The court, however, read *Nyquist* extremely broadly, finding that in that case the primary effects test had become an " 'any effects' test." 302 Minn. at 232, 224 N.W.2d at 353. Consequently, it did not offer an in-depth analysis of the statute's constitutional defects.

[70] 630 F.2d 855 (1st Cir. 1980), aff'g 479 F. Supp. 1364 (D.R.I. 1979).

[71] 479 F. Supp. at 1371.

[72] 630 F.2d at 859-60.

[73] Id. at 860. The textbook and transportation deductions were also struck down, the former on entanglement grounds, see note 148 infra, and the latter because it was not deemed severable from the rest of the statute. Id. at 862.

The Eighth Circuit, in determining the constitutionality of the nearly identical Minnesota statute in *Mueller v. Allen*, declined to follow this analysis.[74] That court applied a de jure analysis and found that the statute benefits a large, primarily nonsectarian class. The court also accepted the state's argument that the statute operates as a genuine tax deduction comparable to federal income tax deductions for charitable contributions.[75]

2. *Federal Tuition Tax Credits*

Tuition tax credit proposals in Congress have had a short but active history. Such measures have been proposed in each Congress since 1976,[76] and a tuition tax credit bill has been introduced in the current session with the support of the Reagan Administration.[77] This measure is the product of deliberations that took place during the Ninety-seventh Congress, which considered two similar proposals, one of which was also an Administration-sponsored bill.[78] Senators Packwood and Moynihan introduced the other bill,[79] on which they held hearings in 1981; the Senators are also among the co-sponsors of the current legislation.

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[74] 676 F.2d 1195, 1199-1201 (8th Cir.), cert. granted, 103 S. Ct. 48 (1982). The statute was also challenged on establishment clause grounds in 1978 in Minnesota Civil Liberties Union v. Roemer, 452 F. Supp. 1316 (D. Minn. 1978). The three-judge district court found the statute to be constitutional:

> because [it] is neutral and neither advances nor impedes religious activity, benefits the parents of children attending both public and nonpublic schools, has received unchallenged historical acceptance, and is analogous to the long recognized practice of tax deductible contributions to religious and charitable causes by federal and state governments.

452 F. Supp. at 1322. For a critical analysis of this decision, see Note, Constitutional Law—Establishment Clause—Tax Deductions for Cost of Religiously-Oriented Education, 25 Wayne L. Rev. 1119 (1979).

The First Circuit, in *Norberg*, distinguished the Minnesota decision on the basis of the allegations concerning the benefited class; in contrast to the Rhode Island plaintiffs, who provided specific statistics identifying the beneficiaries, the Minnesota challenge stipulated "only that *some* taxpayers who claim the deduction have dependents who attend parochial schools." Minnesota Civil Liberties Union v. Roemer, 452 F. Supp. 1316, 1319 n.2 (D. Minn. 1978) (emphasis by court), cited in Rhode Island Fed'n of Teachers v. Norberg, 630 F.2d 855, 861 (1st Cir. 1980).

Among the plaintiffs who brought the current challenge in Mueller v. Allen, 514 F. Supp. 998 (D. Minn. 1981), were some who had tried and failed in *Roemer*. They were dismissed from the second case on the theory of res judicata. Id. at 999. The *Roemer* analysis was confirmed when the Eighth Circuit upheld the statute on virtually the same grounds as the 1978 decision.

The only significant difference between *Mueller* and *Roemer* concerned the finding of historical acceptance. The historical acceptance argument is based on Walz v. Tax Comm'n, 397 U.S. 664 (1970), in which the Supreme Court gave significance to the fact that property tax exemptions had been in operation since before the adoption of the Constitution. Id. at 676-78. The Eighth Circuit rejected the analogy to the Minnesota statute, even though it had been in operation for over 25 years. Quoting the district court in *Norberg*, the Eighth Circuit agreed that "[t]he *Walz* property tax exemptions were upheld not merely because of their long historical acceptance; rather, it was the reason underlying that history of tolerance that proved controlling." Mueller v. Allen, 676 F.2d 1195, 1203 n.16 (8th Cir. 1982) (quoting *Norberg*, 479 F. Supp. 1364, 1371 n.9 (D.R.I. 1979)).

[75] Mueller v. Allen, 676 F.2d 1195, 1203, 1205 (1982).

[76] Proposed bills have taken several forms, including tax credits only for higher education tuition, see S. 311, 95th Cong., 1st Sess., 123 Cong. Rec. 1526 (1977) (credit for all expenses, up to $500, attributable to tuition, fees, books, supplies, and equipment for undergraduate courses

The Administration's proposal, the Educational Opportunity and Equity Act of 1983, would allow a credit against taxes for tuition paid to nonpublic schools.[80] Specifically, the bill would permit a taxpayer to reduce his or her tax liability by an amount equal to fifty percent of tuition expenses incurred, with certain limitations:[81] the credit cannot exceed a statutory maximum of $300 when the bill is fully effective;[82] the credit covers only tuition and fees paid for full-time enrollment in grades one through twelve and excludes books, supplies, equipment, and transportation expenses;[83] and the institution attended has to be an elementary or secondary, not-for-profit, privately operated school.[84] The full benefit of the bill is not available to taxpayers

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or required courses at vocational schools); only for elementary and secondary school tuition, see S. 2673, 97th Cong., 2d Sess., 128 Cong. Rec. S7406-08 (daily ed. June 23, 1982); and for a combination of the two, see S. 550, 97th Cong., 1st Sess., 127 Cong. Rec. S1514-16 (daily ed. Feb. 24, 1981). For other measures, see also Tuition Tax Relief Bills: Hearings Before the Subcomm. on Taxation and Debt Management Generally of the Senate Finance Comm., 95th Cong., 2d Sess. 3-49 (1978) [hereinafter 1978 Hearings]. In 1978, tuition tax credit bills passed both the Senate and the House of Representatives. Unlike the House measure, the Senate bill excluded elementary and secondary school expenses; this difference proved fatal and no compromise measure ever received bicameral acceptance. See 124 Cong. Rec. 37,566-69 (1978), discussing H.R. 12050, 95th Cong., 2d Sess. (1978).

[77] See S. 528, 98th Cong., 1st Sess., 129 Cong. Rec. S1335-42 (daily ed. Feb. 17, 1983).

[78] See S. 2673, 97th Cong., 2d Sess., 128 Cong. Rec. S7405-10 (daily ed. June 23, 1982).

[79] See S. 550, 97th Cong., 1st Sess., 127 Cong. Rec. S1514-16 (daily ed. Feb. 24, 1981). This measure also extended the credit to tuition paid to colleges, universities, and vocational schools. While aid to colleges and universities has been allowed more liberally by the Supreme Court, see note 58 supra, it is unlikely that this joint aid package would have insulated the elementary and secondary school credits from constitutional scrutiny; also, the bill contained a severability provision, id. at § 2(d).

[80] S. 528, 98th Cong., 1st Sess., 129 Cong. Rec. S1335-38 (daily ed. Feb. 17, 1983).

[81] Id. at § 3(a) (creating I.R.C. § 44H).

[82] The maximum credit will be $100 in the first year of the bill's operation, $200 in the second year, and $300 thereafter. Id. (creating I.R.C. § 44H(b)(1)). Budgetary considerations have prompted the reduction of the allowed credit from that allowed by the proposals advanced in the previous Congress. The 1981 Packwood-Moynihan bill granted a maximum credit of $1000, S. 550, § 2(a) (creating I.R.C. § 44F(b)(1)), while the Administration's own 1982 legislation reached a ceiling of $500, S. 2673, § 3 (creating I.R.C. § 44H(b)(1)).

[83] S. 528, § 3(a) (creating I.R.C. § 44H(d)(4)).

[84] Id. (creating I.R.C. § 44H(d)(3)).

having a joint adjusted gross income in excess of $40,000.[85] Unlike the earlier Packwood-Moynihan proposal, this measure does not provide for a refund in the event that the allowable credit exceeds an individual's tax liability; even the sponsors, however, have called for the inclusion of such a provision so that each eligible taxpayer could receive the full benefit of the credit.[86]

Supporters of federal tuition tax credits present two general arguments to counter constitutionally based challenges. First, they assert that the Supreme Court will show greater deference toward Congress than it has toward state legislatures that have enacted similar measures. Second, they allege that tuition benefits implemented on a national level would benefit a broader class than the state measures have, and thus would not be seen as having a primary effect of advancing religion.

B. Supreme Court Precedent

In 1973, the Supreme Court for the first time confronted the issue of the constitutionality of tuition tax benefits in two decisions, *Committee for Public Education & Religious Liberty v. Nyquist*[87] and *Sloan v. Lemon*.[88] In *Nyquist* the Court found unconstitutional a New York statute that granted benefits to parents whose children attended nonpublic elementary and secondary schools.[89] Parents with taxable incomes of under $5000 a year were given reimbursements directly from the state for fifty percent of their tuition expenses, not to exceed $50 for each elementary school child and $100 for each high school student.[90] Parents who paid at least $50 for nonpublic school tuition but had taxable incomes between $5000 and $25,000 were allowed to deduct a statutorily set amount, depending on income, from their adjusted gross income prior to determining their tax liability.[91]

The Court had difficulty categorizing the latter benefit as either a credit or deduction. The difficulty arose because, although in the form of a deduction, the amount allowable varied according to the taxpayer's adjusted gross income from $1000 to $100 per dependent.

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[85] Id. (creating I.R.C. § 44H(b)(1)(B)). Further, the credit is totally phased out for taxpayers with $60,000 or more in joint adjusted gross income. See id.

[86] 129 Cong. Rec. S1335 (daily ed. Feb. 17, 1983) (statement of Sen. Dole); id. at S1342 (statement of Sen. Moynihan).

[87] 413 U.S. 756 (1973).

[88] 413 U.S. 825 (1973).

[89] The decision also invalidated provision for direct grants to reimburse qualifying nonpublic schools for maintenance and repair expenditures. 413 U.S. at 774-80.

[90] Id. at 764.

[91] Id. at 765-66.

This resulted in a precalculated net benefit to the taxpayer ranging from $50 per dependent for a family at the lowest end of the income scale to $0 at the upper end, in effect taking up where the reimbursements had left off.[92] Thus the deduction operated much like a credit, reducing the tax payable by amounts of up to $50 for each child. The Court noted: "We see no reason to select one label over another, as the constitutionality of this hybrid benefit does not turn in any event on the label we accord it."[93] Nonetheless, the Court specifically reserved judgment on the constitutionality of "a genuine tax deduction, such as for charitable contributions."[94] In more recent cases, proponents of tuition tax deductions have cited this reservation as support for their programs. This argument, which the Eighth Circuit accepted in *Mueller v. Allen*,[95] will be confronted in the next Section.

In *Nyquist*, the Court urged that if the direct grants to low-income families "are offered as an incentive to parents to send their children to sectarian schools by making unrestricted cash payments to them, the Establishment Clause is violated whether or not the actual dollars given eventually find their way into the sectarian institutions."[96] Applying the same test to the tax benefit provision for middle-income families, the Court held that both portions of the New York plan failed the primary effects test.[97]

Sloan v. Lemon,[98] decided the same day as *Nyquist*, dealt with a Pennsylvania statute providing direct reimbursements to parents of $75 for each nonpublic elementary school student and $150 for each secondary student attending nonpublic schools, not to exceed actual tuition paid.[99] The Court struck down the law, finding:

> The State has singled out a class of its citizens for a special economic benefit. Whether that benefit be viewed as a simple tuition subsidy, as an incentive to parents to send their children to sectarian schools, or as a reward for having done so, at bottom its intended consequence is to preserve and support religion-oriented institutions.[100]

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[92] Id. at 766-67 & nn.18-19.

[93] Id. at 789.

[94] Id. at 790 n.49.

[95] 676 F.2d 1195, 1203 (8th Cir. 1982).

[96] 413 U.S. at 786.

[97] Id. at 791. The Court quoted with approval the statement in dissent below that "[i]n both instances the money involved represents a charge made upon the state for the purpose of religious education." Id. (citation omitted).

[98] 413 U.S. 825 (1973).

[99] Id. at 828.

[100] Id. at 832.

The Supreme Court has not spoken specifically on tuition benefits in the succeeding years except to affirm summarily three lower court decisions that had found tuition aid programs unconstitutional.[101] Thus *Nyquist* and, to a lesser extent, *Sloan* have governed inquiry into the constitutionality of tuition tax benefits. But while the Court's summary affirmances have limited precedential value, they do indicate a consistent view of tuition aid programs.[102]

In the first of these decisions, *Grit v. Wolman*, issued the same day as *Nyquist* and *Sloan*, the Supreme Court affirmed the judgment of a three-judge federal district court in Ohio that invalidated a tax credit plan covering nonpublic and some public school tuition.[103] The Ohio statute allowed qualifying taxpayers to subtract school expenses of up to $90 per child from their state and local taxes otherwise payable.[104] This statute provided benefits for designated groups of public school students, primarily the disabled,[105] as well as nonpublic school students. The district court held that broadening the benefited class to include these new individuals did not make the statute constitutional, for the benefited class was still overwhelmingly sectarian.[106] The lower court also found no significant difference between credits and other forms of tax benefits, holding that religion is advanced just the same.[107]

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[101] See Byrne v. Public Funds for Pub. Schools, 442 U.S. 907, aff'g mem. 590 F.2d 514 (3d Cir. 1979) (discussed at text accompanying notes 108-11 infra); Franchise Tax Bd. v. United Ams. for Pub. Schools, 419 U.S. 890 (1974) (mem.) (state income tax reductions for taxpayers sending their children to nonpublic schools) (affirming unreported decision by N.D. Cal.); Grit v. Wolman, 413 U.S. 901 (1973), aff'g mem. Kosydar v. Wolman, 353 F. Supp. 744 (S.D. Ohio 1972) (discussed at text accompanying notes 103-07 infra).

[102] State courts have also had occasion to review tuition aid statutes under the United States Constitution. See People ex rel. Klinger v. Howlett, 56 Ill. 2d 1, 305 N.E.2d 129 (1973) (invalidating grant program on the authority of *Nyquist*); Minnesota Civil Liberties Union v. State, 302 Minn. 216, 224 N.W.2d 344 (1974), cert. denied, 421 U.S. 998 (1975) (discussed at note 69 supra).

One state court also found a tuition aid program for elementary and secondary schools invalid under its more restrictive state constitution. See Weiss v. Bruno, 82 Wash. 2d 199, 209-12, 509 P.2d 973, 978-81 (1973) (grants to needy students of $100 for elementary school and $300 for secondary school to help meet tuition costs and other expenses, with 85% of the funds used for nonpublic school students); see also Sheldon Jackson College v. State, 599 P.2d 127, 132 (Alaska 1979) (college tuition grant program violates Alaska Constitution); cf. California Teachers Ass'n v. Riles, 29 Cal. 3d 794, 812-13, 632 P.2d 953, 964, 176 Cal. Rptr. 300, 311 (1981) (textbook loan program to nonpublic school students found violative of state constitution); Paster v. Tussey, 512 S.W.2d 97, 104 (Mo. 1974) (same), cert. denied, 419 U.S. 1111 (1975).

[103] Grit v. Wolman, 413 U.S. 901 (1973), aff'g mem. Kosydar v. Wolman, 353 F. Supp. 744 (S.D. Ohio 1972). Ohio turned to credits as a means of reimbursing parents only after a previous program of direct grants, also in the amount of $90 for each child, was found unconstitutional in Wolman v. Essex, 342 F. Supp. 399 (S.D. Ohio), aff'd mem., 409 U.S. 808 (1972), reh'g denied, 413 U.S. 923 (1973). The three-judge court found that state funds were going to parochial schools, the parents being "mere conduits." Id. at 416.

Further, the original plan contained inherent entanglement, as the dollar amount of the grant in the future was left to the political process. Id. at 417-18. The successor statute, at issue in *Kosydar v. Wolman*, provided that the size of grants in future years would be determined by a statutorily set calculation of relevant factors. 353 F. Supp. 744, 750-51. Still, the court was not convinced that political entanglement would be avoided. See id. at 766. The court also found no constitutional difference between direct grants and tax credits. See id. at 751.

[104] A taxpayer who owed less in income tax than the total credit allowed was eligible to receive a refund from the state, although the total refund could not exceed the sum of the

The Supreme Court gave that conclusion additional support in affirming *Public Funds for Public Schools v. Byrne*,[108] a Third Circuit decision holding that tax deductions for tuition paid to nonpublic schools violate the establishment clause.[109] The $1000 deduction allowed by the New Jersey statute was not tied to tuition actually paid.[110] The Third Circuit found the statute unconstitutional on the authority of *Nyquist*,[111] and the Supreme Court's affirmance effec-

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income, sales, excise, and property taxes that the taxpayer paid during the tax year. Kosydar v. Wolman, 353 F. Supp. at 750.

[105] These new beneficiaries included:

> (a) Persons enrolled in home instruction programs . . .; (b) Persons enrolled in public adult high school continuation programs . . ., schools for tubercular persons . . ., and vocational and basic literacy programs . . . to the extent that tuition is charged such persons and not paid for by local school districts; (c) Persons who pay non-resident public school tuition payments . . .; and (d) Persons, other than inmates and patients at state institutions and hospitals, who incur tuition or fee expenses in public or private programs for the deaf, blind, crippled, emotionally disturbed, neurologically handicapped, or mentally retarded.

Kosydar v. Wolman, 353 F. Supp. at 750.

[106] See text accompanying notes 129-30 infra.

[107] Kosydar v. Wolman, 353 F. Supp. at 762 ("[T]he form of these benefits, whether by tax credits, exemptions or deductions, cannot alone insulate them from First Amendment infirmity.").

[108] 590 F.2d 514, aff'd mem., 442 U.S. 907 (1979).

[109] The New Jersey statute in question provided that, as part of the new state income tax, "the following additional personal exemptions shall be allowed as a deduction from gross income: . . . for each dependent child attending on a full-time basis an elementary or secondary institution not deriving its primary support from public moneys—$1,000.00." 590 F.2d at 516 (quoting N.J. Stat. Ann. 54A:3-1(b)(2) (West Supp. 1977)).

[110] Since everyone who fell under the statute was automatically entitled to a $1000 deduction, regardless of actual expenditures, the benefited class would have been greatly expanded if all parents had been entitled to the deduction. The court left open the question of what effect such a provision would have had:

> Inasmuch as New Jersey's exemption denies to parents of public school students a benefit granted to parents of students in nonpublic schools, the exemption is not saved because a similar provision applies to parents of college and university students, including those in public institutions. . . . New Jersey's exemption for taxpayers who support dependents in nonpublic elementary or secondary schools is not a neutral approach to religion; it does not encompass a comprehensive system of educational exemptions.

Id. at 520.

[111] Id.

tively placed tax deductions in the same category of unconstitutional aid to religion as credits, reimbursements, and the hybrid benefit in *Nyquist*.

C. The Current Issues: An Analysis

1. Mueller v. Allen

The novelty of the Minnesota program at issue in *Mueller v. Allen* is in the granting of tax deductions, similar to those at issue in *Byrne*, coupled with a facially broad class of recipients, such as that in *Grit*. This combination of elements is before the Supreme Court for the first time. Since the Court decided *Byrne* and *Grit* without opinion, the rationale for those decisions is unknown; they can be read most plausibly, however, as practical applications of the *Nyquist-Sloan* analysis to constitutionally insignificant variants, justifying the conclusion that tuition tax deductions are unconstitutional even if granted to a theoretically broad class of beneficiaries.

The Eighth Circuit applied the three-part establishment clause test to the Minnesota tuition benefits,[112] finding a valid secular purpose[113] and then concentrating its analysis on the primary effects requirement. The court, in finding that the primary effect of the tuition tax deduction did not advance religion, based its conclusion first on the statute's apparent provision for a broad class of beneficiaries and second on the similarity of broad-based deductions for tuition to deductions for charitable contributions.

As to the first argument, the Eighth Circuit contended that while *Nyquist* concerned a narrow class, the Minnesota statute is distinguishable as it provides for a broad class of beneficiaries and thus is facially neutral toward religion. The statute on its face does allow all parents, whether their children attend public or nonpublic schools, a deduction for tuition expenses. When the benefited class is drawn to include all parents, the benefit to religion does seem "remote and incidental."[114] The real question, however, as the First Circuit recognized in *Rhode Island Federation of Teachers v. Norberg*[115] and as the lower court explained in *Grit v. Wolman*,[116] is the composition of the class that is *actually* benefited. Resolution of this question requires a de facto analysis. The Eighth Circuit rejected the plaintiffs' attempt to demonstrate statistically that the effect of the benefit is to aid a primarily sectarian class. The court relied on the Supreme Court's use of a de jure analysis, looking only to the face of the statute, in *Everson v. Board of Education*[117] and *Board of Education v. Allen*,[118] the only Supreme Court cases in which benefits were given facially to all parents and children.[119]

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[112] The provision for deduction of transportation expenses, insofar as it applies to transportation to and from school only, is valid under Everson v. Board of Educ., 330 U.S. 1 (1947). The textbook deduction must be analyzed further, however. See notes 124 and 148 infra.

[113] The Eighth Circuit found that "[t]he manifest purpose of the challenged statute is to provide all taxpayers a benefit which will operate to enhance the quality of education in both public and private schools." Mueller v. Allen, 676 F.2d 1195, 1198 (8th Cir. 1982). This is consistent with the Supreme Court's approach to the purpose test; as noted earlier, see note 35 and accompanying text supra, the Supreme Court has not required a detailed analysis of legislative purpose in the context of aid to nonpublic schools. In *Lemon v. Kurtzman*, it accepted just such an avowed purpose with the statement that "[a] State always has a legitimate concern for maintaining minimum standards in all schools it allows to operate." 403 U.S. 602, 613 (1971).

However, this aspect alone does not dictate a de jure analysis. A reading of the Supreme Court cases in this area indicates that the Court engages in a two-step analysis to determine whether the primary effect of a challenged statute is government "sponsorship [or] financial support . . . [of] religious activity"[120] to an extent forbidden by the establishment clause. First, as an essential threshold matter, it looks to the nature of the aid, that is, the activity or service that the government proposes to subsidize. In the context of aid to parochial schools, this analysis focuses on whether the aid substantially benefits the educational function of recipient schools and is incapable of separation from the religious aspects of parochial school education.

Only after this determination does the Court look to the "narrowness of the benefited class."[121] If the aid is both substantial and inseparable from the religious aspect of the school's function, the Court uses a de facto analysis of the benefited class, looking to the actual beneficiaries of the statute in operation. As the Court recently observed, when religion would be aided, the introduction of "empirical evidence"—in other words, a de facto analysis of the benefited class—is appropriate to determine the effect of a challanged program.[122] Only in this way can it be seen whether the effect is to aid a primarily sectarian class, or whether the aid to religion is only incidental. If the aid has neither triggering characteristic, however, the Court will engage only in a de jure analysis of the benefited class.

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[114] Mueller v. Allen, 676 F.2d at 1206.

[115] 630 F.2d 855 (1980).

[116] Kosydar v. Wolman, 353 F. Supp. 744, 761 (S.D. Ohio 1972), aff'd mem. sub nom., Grit v. Wolman, 413 U.S. 901 (1973).

[117] 330 U.S. 1 (1947); see text accompanying notes 29-30 supra.

[118] 392 U.S. 236 (1968); see text accompanying notes 41-42 supra.

[119] Mueller v. Allen, 676 F.2d at 1199, 1205. In *Nyquist*, the Supreme Court distinguished *Everson* and *Allen* on the grounds that "[i]n both cases the class of beneficiaries included *all* schoolchildren, those in public as well as those in private schools." 413 U.S. at 782 n.38 (Court's emphasis). This distinction was clarified in *Sloan v. Lemon*, which described tuition reimbursements as "quite unlike the sort of 'indirect' and 'incidental' benefits that flowed to sectarian schools from programs aiding *all* parents by supplying bus transportation and secular textbooks for their children. Such benefits were carefully restricted to the purely secular side of church-affiliated institutions . . . ." 413 U.S. 825, 832 (1973).

[120] Walz v. Tax Comm'n, 397 U.S. 664, 668 (1970).

[121] Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 794 (1973).

Thus, in *Everson* and *Allen*, as well as in more recent cases such as *Committee for Public Education & Religious Liberty v. Regan*,[123] the Court initially analyzed the nature of the governmental assistance to be provided to the parochial schools. The *Nyquist* Court, distinguishing tuition benefits from the aid approved in *Everson* and *Allen*, noted that transportation to school and provision of nonideological textbooks used solely for secular courses "are 'so separate and so indisputably marked off from the religious function' [of parochial schools] that they may fairly be viewed as reflections of a neutral posture toward religious institutions."[124] Likewise, the *Regan* Court found that reimbursements for the costs of administering standardized tests "would serve the State's legitimate secular ends without any appreciable risk of being used to transmit or teach religious views."[125] Only after making this crucial determination did the Court settle on a de jure analysis, limited to the face of the statute, to ascertain the nature of the benefited class.

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[122] See Widmar v. Vincent, 454 U.S. 263 (1981). In that case, the Court noted that the University of Missouri must allow religious groups to use its facilities "[a]t least in the absence of empirical evidence that religious groups will dominate UMKC's open forum." Id. at 275.

[123] 444 U.S. 646 (1980).

[124] Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 782 (quoting Everson v. Board of Educ., 330 U.S. 1, 18 (1947)). This is not to say, however, that the "textbook" deduction at issue in *Mueller* is necessarily constitutional. In 1976, the Minnesota statute was amended to include "instructional materials and equipment" as well as textbooks. See Act of March 8, 1976, ch. 37, § 1, 1976 Minn. Laws 93, 93 (codified at Minn. Stat. Ann. § 290.09(22) (West Supp. 1983)) (effective for taxable years beginning after Dec. 31, 1974). The Eighth Circuit found the inclusion of materials other than books to be "troublesome," *Mueller*, 676 F.2d at 1201, but not unconstitutional. Aside from failing to heed the Supreme Court's dictum that *Board of Educ. v. Allen* should not be extended beyond its facts, see note 43 and accompanying text supra, the Eighth Circuit misread relevant Supreme Court precedent. It distinguished Meek v. Pittenger, 421 U.S. 349 (1975), Wolman v. Walter, 433 U.S. 229 (1977), and Marburger v. Public Funds for Pub. Schools, 417 U.S. 961 (1974), aff'g mem. 358 F. Supp. 29 (D.N.J. 1973), on the ground that the aid for instructional materials and equipment in those cases was given to the schools themselves and not to the parents and students. *Mueller*, 676 F.2d at 1201-02. The Supreme Court has not allowed this factor to be of controlling significance, see note 23 supra, and in fact expressly held so in *Wolman v. Walter*, contrary to the Eighth Circuit's reading of that case. The instructional materials in *Wolman v. Walter* were loaned to the parents and students, not to the schools, yet the program was held to violate the establishment clause. 433 U.S. at 250-51. Likewise, the Minnesota statute's parental tax deductions for "textbooks" should be found unconstitutional.

[125] Committee for Pub. Educ. & Religious Liberty v. Regan, 444 U.S. 646, 662 (1980).

The aid at issue in *Mueller* is not analogous to transportation, textbooks, or testing services. Minnesota is attempting to subsidize tuition payments. Such payments substantially benefit the educational function of schools, as they are a substantial source of the revenue that keeps the schools in operation. Further, tuition payments clearly support a school's total educational programs, which in the case of parochial schools necessarily includes religious instruction; the state is supporting part of this function when it grants tax benefits for such payments. Tuition tax benefits thus lack "an effective means of guaranteeing that the state aid derived from public funds will be used exclusively for secular, neutral, nonideological purposes."[126] Therefore, a de facto analysis of the benefited class is warranted.

The Eighth Circuit conceded that the tuition tax deduction, while available for payments made in a variety of contexts,[127] benefits "only a minority of taxpayers with dependents in the public school system."[128] Just how small a minority is not certain, but it can be inferred from estimates relied upon by the lower court in *Grit v. Wolman*,[129] concerning a statute that had been amended to extend tax benefits to most of the same categories of beneficiaries as the Minnesota statute. When only nonpublic school parents were covered by the statute, ninety-eight percent of the beneficiaries sent their children to church-related schools. When the public school parents were also made eligible, the court concluded that "[i]n relation to the size of the original and overwhelmingly sectarian subclass of nonpublic school parents . . . , the aggregate of new beneficiaries will not alter in a meaningful fashion the sectarian nature of the recipient class taken as a whole."[130]

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[126] Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 780 (1973).

[127] The decision cited the district court's finding that payments which warranted deductions included:

1. Tuition in the ordinary sense.
2. Tuition to public school students who attend public schools outside their residence school districts.
3. Certain summer school tuition.
4. Tuition charged by a school for slow learner private tutoring services.
5. Tuition for instruction provided by an elementary or secondary school to students who are physically unable to attend classes at such school.
6. Tuition charged by a private tutor or by a school that is not an elementary or secondary school if the instruction is acceptable for credit in an elementary or secondary school.
7. Montessori School tuition for grades K through 12.
8. Tuition for driver education when it is part of the school curriculum.

676 F.2d at 1196 (citing 514 F. Supp. 998, 1000 (D. Minn. 1981)).

[128] See id. at 1205. The court was acknowledging that the state could exclude religion-affiliated schools from government benefits without violating the equal protection clause. While the courts have never wavered from this position, sporadic attempts have been made to challenge it. For example, in Sloan v. Lemon, 413 U.S. 825 (1973), it was argued that the tuition reimbursement statute should be upheld as to nonsectarian schools, and then made applicable to parochial schools as a matter of equal protection. The Supreme Court rejected that line of reasoning, holding that "[t]he Equal Protection Clause has never been regarded as a bludgeon with which to compel a State to violate other provisions of the Constitution." Id. at 834; see also Norwood v. Harrison, 413 U.S. 455, 462 (1973) ("It has never been held that if private schools are not given some share of public funds allocated for education that such schools are isolated into a classification violative of the Equal Protection Clause."); Luetkemeyer v. Kaufmann, 364 F. Supp. 376, 381-82 (W.D. Mo. 1973) (statute providing school bus transportation only for public school students does not violate equal protection clause), aff'd mem., 419 U.S. 888 (1974).

The nature and size of the benefited class can also be measured on a nationwide scale. The Supreme Court, in *Nyquist*, accepted the premise that nonpublic schools receive thirty percent of their funding from tuition.[131] On that assumption, according to the most recent statistics published by the federal government, parents pay over $3.5 billion a year in nonpublic school tuition.[132] By contrast, public school parents pay $200 million a year at most.[133] It is clear that taxpayers with children in nonpublic schools, paying a total sum at least seventeen times as much as their public school counterparts, are by far the primary beneficiaries of any tuition aid statute. When translated into per-pupil costs, the statistics are more striking; the average payment is 142 times as much for nonpublic school students.[134] This arithmetic indicates that, as individual taxpayers, parents with children in nonpublic schools have much more to gain from any form of tuition tax benefit.

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[129] Kosydar v. Wolman, 353 F. Supp. 744 (S.D. Ohio 1972), aff'd mem. sub nom. Grit v. Wolman, 413 U.S. 901 (1973). The case is discussed at text accompanying notes 103-07 supra.

[130] Kosydar v. Wolman, 353 F. Supp. at 761. The court found that of 334,420 nonpublic school students in Ohio, 98% attended parochial schools. Id. at 748 n.1. The court also found that the largest of the new classes of beneficiaries "numbers something in the nature of 20,000 pupils and that the others are substantially smaller." Id. at 761 (footnote omitted). If the number of parochial school students—327,732, or 98% of 334,420—is divided by the new total of 354,420, the percentage of sectarian beneficiaries is only reduced to 92.5%, although the resulting percentage would be slightly smaller when other groups of public school beneficiaries are accounted for.

[131] 413 U.S. 756, 787 (1973) (citing appellee's estimate).

[132] National Center for Education Statistics, U.S. Dep't of Education, Digest of Education Statistics 19 (1982) (receipts of educational institutions, 1979-1980). The statistics show that nonpublic elementary and secondary schools were funded by $11,817,000,000. This entire amount came from student fees, private contributions, and other sources of funding exclusive of government aid. Thirty percent of that figure is $3,545,100,000.

[133] Id. Total receipts for public elementary and secondary schools amounted to $100,954,463,000, of which only $200,000,000 was not attributable to government support. The $200 million was received from student fees, private contributions, and other nongovernmental sources. For the sake of comparison, this discussion treats the entire amount as if it were derived from student fees.

[134] In 1979-1980, 41,579,000 students attended public elementary and secondary schools and 5,100,000 attended private schools. National Center for Education Statistics, U.S. Dep't of

Likewise, the primary effect of the Minnesota statute is to aid parents whose children attend nonpublic schools, notwithstanding that some public school parents are also beneficiaries. Moreover, because nearly ninety-four percent of the state's nonpublic school students attend parochial schools, "nonpublic" is tantamount to "sectarian."[135]

This is no less true in light of the Supreme Court's dictum in *Nyquist* reserving judgment on the constitutionality of a "genuine tax deduction, such as for charitable contributions."[136] Nevertheless, the Eighth Circuit based its decision in *Mueller* largely on its view that deductions for tuition and those for charitable contributions are equivalent.[137] The two are subject to the same analysis; contrary to the *Mueller* court's opinion, a de facto rather than a de jure analysis should be applied to both. As will be demonstrated below, however, such an approach is impracticable when applied to charitable contribution deductions.

Deductions for charitable contributions, as defined in section 170 of the Internal Revenue Code, are available to contributors to all nonprofit charitable institutions, including medical and research fa-

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Education, The Condition of Education 44 (1982). Dividing $200 million by the entire number of public school students yields expenses of $4.81 per student. In contrast, when $3.5 billion is divided by the total number of nonpublic school students, the resulting per capita expense is $686.27, or 142.7 times the per capita expense for public school students.

[135] National Center for Education Statistics, U.S. Dep't of Education, Digest of Education Statistics 49 (1982). In 1980 Minnesota had 90,557 nonpublic school students, of whom 85,016, or 93.9%, attended church-related schools.

[136] Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 790 n.49 (1973).

[137] See 676 F.2d at 1205. In addition, the fact that a tax deduction was involved in *Mueller* led the Eighth Circuit to distinguish *Nyquist* on the ground that the Minnesota statute has the form of a genuine deduction while the New York statute in *Nyquist* involved a hybrid benefit that functioned more like a tax credit. Mueller v. Allen, 676 F.2d at 1203. In *Byrne v. Public Funds for Pub. Schools*, however, the Supreme Court affirmed a decision holding tuition tax deductions unconstitutional. 442 U.S. 907, aff'g mem. 590 F.2d 514 (3d Cir. 1979); see text accompanying notes 108-11 supra. While the amount deductible was not tied to actual tuition expenditures, it was no less a true deduction than the standard $1000 deduction for each dependent allowed by the Internal Revenue Code, see I.R.C. § 151 (1976 & Supp. V 1981). Unlike the *Nyquist* statute, under which the amount deductible varied from one taxpayer to another in order to achieve a predetermined net effect on tax liability, see 413 U.S. at 765-66, the *Byrne* statute allowed the full $1000 deduction to be taken by all qualifying taxpayers, regardless of adjusted gross income, see 590 F.2d at 518. Thus, as the *Byrne* Court implicitly recognized, tuition tax deductions do not differ in principle or in constitutionality from credits or other forms of tuition aid. The form of the aid is of constitutional significance only in the entanglement prong of the establishment clause test. See text accompanying notes 47-50 supra.

cilities, educational institutions, and other worthy causes, as well as religious organizations.[138] Tax deductions aid religion whenever a deduction is allowed for a contribution made directly to a church or like institution with no attempt to guarantee that the contribution will not be used for religious purposes.

Under the two-part "primary effect" analysis set out above, a de facto test is called for to determine whether the institutions benefited by section 170 constitute a primarily sectarian class.[139] In the case of charitable deductions, however, such an analysis involves tremendous practical and constitutional difficulties. There are no available statistics classifying the recipients of charitable contributions, let alone showing how many dollars each receives. Even if such data existed, difficulties would arise in categorizing church-affiliated institutions such as social welfare organizations, hospitals, and schools as sectarian or secular. A line could be drawn between religion-pervasive institutions, such as parochial elementary and secondary schools, and institutions whose secular functions clearly outweigh their sectarian characteristics, such as most church-affiliated colleges and hospitals.[140]

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[138] I.R.C. § 170(c) (1976). Federal courts have never found tuition payments to schools to be classifiable as charitable contributions. See, e.g., Oppewal v. Commissioner, 468 F.2d 1000 (1st Cir. 1972) (voluntary payment to religious school attended by taxpayer's children not deductible); Haak v. United States, 451 F. Supp. 1067 (W.D. Mich. 1978) (contributions to a church are not deductible in the face of a verbal agreement that church will pay donors' educational costs); see also Rev. Rul. 79-99, 1979-1 C.B. 108 (no deduction allowed for "contributions" to child's school). The Internal Revenue Code defines a deductible charitable contribution as "a contribution or gift to or for the use of" a qualifying organization. I.R.C. § 170(c). The Supreme Court has held that "[a] gift in the statutory sense . . . proceeds from a 'detached and disinterested generosity' . . . . [T]here must be an objective inquiry as to whether what is called a gift amounts to it in reality." Commissioner v. Duberstein, 363 U.S. 278, 285-86 (1960) (citations omitted).

Tuition, unlike the "gifts" exempted by § 170, is payment made in return for services. Whether it is labeled "tuition" or "contribution," it is no more a charitable gift than is payment to a hospital for costs incurred for treatment. The Internal Revenue Service will disallow a contribution to a qualifying institution to the extent that it is offset by the fair market value of services received from that institution. The I.R.S. has explained:

> [I]t is immaterial that the payments . . . were not explicitly designated as tuition. . . . However the payment is designated, and whatever the taxpayer's motive in making it, the test to be applied is whether the payment was, to any substantial extent, offset by the fair market value of services rendered to the taxpayer in the nature of tuition. If so, the payment, to the extent of the offset, should be regarded as non-deductible tuition.

Rev. Rul. 79-99, 1979-1 C.B. at 108-09. Under this criterion, deductions for tuition payments cannot, as a practical matter, be equated with charitable contributions.

[139] See text accompanying notes 120-22 supra.

[140] Even if such a classification were successfully completed with the religious beneficiaries identified and comparative financial statistics analyzed, the results would probably show that the benefited class was neither overwhelmingly sectarian nor overwhelmingly secular. Instead, the percentage of sectarian beneficiaries would more than likely put the charitable contribution deductions into a "gray zone" between aid having a primary effect of advancing religion and

Drawing this line in practice, however, would result in excessive entanglement, as it would require inquiries into the operation of religiously affiliated organizations.[141]

In light of these difficulties, the constitutionality of charitable deductions must be determined under a different analysis, and the Supreme Court has indicated that the appropriate analysis would be "the 'neutrality' test in *Walz*."[142] In *Walz v. Tax Commission*,[143] a case concerning property tax exemptions for religious institutions, the Court did not employ the usual establishment clause test but developed an analysis to accommodate both establishment clause and free exercise concerns; the analysis requires a neutral role for government with respect to religion, permitting "neither sponsorship nor hostility."[144] The Court found the exemptions constitutionally neutral for two reasons. The first concerned the nature of the benefited class. Religious groups were just one category among the larger class of nonprofit organizations whose facilities were exempted from taxation.[145] Similarly, charitable contributions ultimately benefit a broad class of institutions. Tax deductions for tuition do not.

The second basis of the *Walz* neutrality doctrine was the necessity of avoiding church-state entanglement. The *Walz* Court recognized that the only alternative to exemption is taxation, and thus possible entanglement.[146] This is not an issue in section 170 deductions or in tuition tax deductions. In light of the preceding discussion, however, the *Mueller* court was in error in failing to distinguish the deductions for charitable contributions from those for tuition payments.

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that having only an incidental effect. In such a situation, the constitutionality of the aid would be uncertain.

[141] Tuition tax deductions, on the other hand, are free from such entanglement considerations as elementary and secondary schools are easily classified as either sectarian or secular.

[142] See Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 790 n.49 (1973).

[143] 397 U.S. 664 (1970).

[144] Id. at 672.

[145] The exemption at issue applied to charitable, educational and religious organizations, including property used exclusively for "religious, . . . charitable, . . . hospital, . . . educational, public playground, scientific, literary, bar association, medical society, library, patriotic, historical or cemetery purposes." Id. at 667 n.1.

[146] Taxation of church property could be viewed as a form of "hostility" toward religion, Walz v. Tax Comm'n, 397 U.S. at 673, and would engender the excessive entanglement involved in assessing and collecting taxes. Id. at 674. The *Walz* Court noted that taxing church property could give rise to liens and foreclosures, "and the direct confrontation and conflicts that follow in the train of those legal processes," id., while exemption "restricts the fiscal relationship between church and state, and tends to complement and reinforce the desired separation insulating each from the other." Id. at 676.

Administering the tuition portion of the Minnesota statute does not affirmatively foster excessive entanglement with religion under the third aspect of the establishment clause test as developed in *Lemon v. Kurtzman.*[147] Rather, the program illustrates the Scylla-and-Charybdis problem. The state would only have to audit individual tax returns, with the taxpayer merely having to substantiate that the amount deducted was in fact paid in tuition to a qualifying educational institution.[148] But in failing to monitor the uses to which such tuition payments are put, the state has generated an effects problem. Nothing more clearly contributes to the sectarian educational function of religious schools than does tuition; without such payments it is highly doubtful that most religious schools could operate at all.[149] Thus tuition aid programs prompt serious consideration under the primary effects test. Minnesota has tried to clear this formidable hurdle by including all parents in its tuition benefit scheme. When the class of parents who actually incur tuition expenses is scrutinized, however, its sectarian nature is clear. On this basis, the Supreme Court should reverse the Eighth Circuit decision in *Mueller v. Allen* and hold that the Minnesota tuition tax deduction violates the establishment clause.

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[147] 403 U.S. 602 (1971); see text accompanying notes 46-50, 55-57 supra.

[148] It is not the form of the tax deduction but the general nature of the aid, tuition benefits, that avoids the entanglement problem. In a different context tax deductions can engender excessive entanglement. For example, the *Mueller* statute also allows deductions for secular textbooks, instructional materials, and equipment. The Eighth Circuit, relying on *Walz*, held that tax deductions are neutral toward religion because, as with tax exemptions, the state "abstains from taxing that income" which a taxpayer has allocated to educational expenses. Mueller v. Allen, 676 F.2d 1195, 1203, 1205 (8th Cir. 1982). This is not an accurate characterization of tax deductions, however. Deductions, like credits and reimbursements, continually involve government in the determination of tax liability. If audited, the taxpayer must show that deductions taken do not include payments for religion-related educational materials. The government thus becomes entangled to an impermissible degree in the determination of which materials and equipment are unquestionably secular and which are not. The First Circuit, in *Rhode Island Fed'n of Teachers v. Norberg*, pointed out:

> We think it highly unlikely, . . . especially in the case of textbooks and instructional materials, that the choice of materials will be made by the parent. If only to ensure that students study proper materials and are evaluated fairly, schools will be forced to provide some guidance on the purchase of educational materials. Thus, if a dispute arises as to the religious nature of a text or instructional materials, the dispute will eventually have to be resolved between the State and the affected religious institution. . . . This is precisely the kind of affirmative entanglement of church and state the first amendment prohibits.

630 F.2d 855, 862 (1980).

[149] If the Minnesota statute allowed tax deductions for tuition applicable only to the secular functions of the schools, it would fail by the same reasoning as did salary supplements for parochial school teachers and field trip transportation for parochial school students. See text accompanying notes 59-62 supra.

2. *The Congressional Proposals*

While the granting of tuition tax credits to nonpublic school parents would seem to be foreclosed by Supreme Court precedent, particularly the *Nyquist* decision,[150] supporters of federal legislation claim that their programs can be distinguished from the unconstitutional state programs on two grounds: first, the deference shown to Congress by the courts, and second, the dilution of the sectarian component of the benefited class.

At the Senate hearings on the Packwood-Moynihan bill, for example, its supporters tried to assuage doubts about its constitutionality with the proposition that, whatever the Supreme Court may decide about state legislation, when the Congress of the United States speaks, its pronouncements are treated with a deference far greater than that paid to any single state legislature.[151] While in other areas congressional pronouncements are accorded great weight,[152] where first amendment prohibitions are at stake, such deference is not appropriate. Any attack on tuition tax legislation will rest directly on the Framers' admonishment that "*Congress* shall make no law respecting an establishment of religion."[153]

The proponents' argument is justifiable to the extent that the Supreme Court defers to congressional statements of purpose. Each of the recent federal proposals has been prefaced by a statement that its purpose is to promote educational pluralism, opportunity, and diversity.[154] But while the Court does not scrutinize explicit statements of a nonsectarian legislative purpose,[155] that is no indication that the Court would defer to Congress on the ultimate determination of constitutionality.

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[150] See Hunter, The Continuing Debate Over Tuition Tax Credits, 7 Hastings Const. L.Q. 523, 544-46 (1980).

[151] That bill even included a finding that "[w]hile the Congress recognizes that the Supreme Court is ultimately responsible for determining the constitutionality of provisions of law, the Congress finds that the provision of such relief to individuals or families in this manner is in accord with all provisions of the Constitution." S. 550, 97th Cong., 1st Sess. § 1(b), 127 Cong. Rec. S1514 (daily ed. Feb. 24, 1981). See also Tuition Tax Credits: Hearings on S. 550 Before the Subcomm. on Taxation and Debt Management of the Senate Comm. on Finance, 97th Cong., 1st Sess. 320 (1981) (statement of William Bentley Ball, Esq., Ball & Shelly, Harrisburg, Pa.) ("The adoption of [tuition tax credit legislation] by the Congress will have strong constitutional significance in that it will represent a *national* judgment with respect to the public interest and welfare.") (emphasis in original); 1978 Hearings, supra note 76, at 296 (statement of Prof. Antonin Scalia) ("It is unquestionable that the Supreme Court—in this field even more than in most—is more disposed to accord validity to the acts of this Congress than to those of State legislatures.").

[152] See, e.g., Rostker v. Goldberg, 453 U.S. 57, 64-68 (1981) (deference to Congress' decision to require Selective Service registration for males only); Fullilove v. Klutznick, 448 U.S. 448, 472 (1980) (deference to Congress in equal protection challenge to affirmative action program).

[153] U.S. Const. amend. I (emphasis added).

[154] See S. 528, 98th Cong., 1st Sess. § 2(b), 129 Cong. Rec. S1336 (daily ed. Feb. 17, 1983) ("The primary purpose of this Act is to enhance equality of educational opportunity, diversity,

As in the tuition benefit cases discussed above, that determination would rest in large part on the primary effects aspect of the establishment clause test. As in *Mueller*, the breadth of the benefited class is an essential consideration. There is even a stronger case for invalidating the federal legislation, however, as none of the federal measures has contained even the pretense of widening the benefited class by including public school students.[156] Rather, the proposed statutes have been designed for parents whose children attend "privately-operated, not-for-profit" schools.[157] Their supporters' contention that these measures would not have a primary effect of advancing religion rests on the assumption that the national ratio of parochial school students to private, nonsectarian school students is lower than in states whose tuition aid benefits have been struck down.[158] There is no evidence that this is the case. In the 1980-1981 academic year, the most recent for which federal statistics are available, 5,028,865 pupils attended nonpublic elementary and secondary schools.[159] Of these, 4,226,491, or eighty-four percent, attended church-related facilities.[160] Thus this group's representation in the class of beneficiaries designated by the legislation is not appreciably smaller than it was in New York, Rhode Island, and other states whose aid programs have failed the primary effects test.[161]

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and choice for Americans."); S. 2673, 97th Cong., 2d Sess. § 2, 128 Cong. Rec. S7406 (daily ed. June 23, 1982) (same); S. 550, 97th Cong., 1st Sess. § 1(b), 127 Cong. Rec. S1514 (daily ed. Feb. 24, 1981) ("The primary purpose of this Act is to enhance equality of educational opportunity for all Americans at the schools . . . of their choice.").

However, "the propriety of a legislature's purposes may not immunize from further scrutiny a law which either has a primary effect that advances religion, or which fosters excessive entanglements between Church and State." Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 774 (1973).

[155] See note 35 and accompanying text supra.

[156] Even if they had so broadened the class, the actual change in the nature of the class would have been negligible. See text accompanying notes 131-34 supra.

[157] See text accompanying note 84 supra.

[158] See 1978 Hearings, supra note 76, at 296 (statement of Prof. Antonin Scalia).

[159] National Center for Education Statistics, U.S. Dep't of Education, Digest of Education Statistics 49 (1982). These statistics include kindergarten students.

[160] Id.

[161] See Sloan v. Lemon, 413 U.S. 825, 830 (1973) (more than 90% of nonpublic school students in Pennsylvania enrolled in parochial schools); Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 768 (1973) (85% of nonpublic schools in New York church-affiliated); Rhode Island Fed'n of Teachers v. Norberg, 630 F.2d 855, 859 (1st Cir. 1980) (94% of nonpublic school students in Rhode Island); Public Funds for Pub. Schools v. Byrne, 590 F.2d 514, 516 (3d Cir.) (nearly 95% of nonpublic schools in New Jersey), aff'd mem., 442 U.S. 907

Furthermore, it is not difficult to see that relieving parents of up to fifty percent of their tuition expenses would permit some to send their children to nonpublic schools who otherwise would be unable to do so. The true beneficiaries of any such legislation would be the schools themselves, which would receive essential tuition revenue.[162] As the Supreme Court held in *Nyquist*,

> it is precisely the function of New York's law to provide assistance to private schools, the great majority of which are sectarian. By reimbursing parents for a portion of their tuition bill, the State seeks to relieve their financial burdens sufficiently to assure that they continue to have the option to send their children to religion-oriented schools. And while the other purposes for that aid—to perpetuate a pluralistic educational environment and to protect the fiscal integrity of overburdened public schools—are certainly unexceptionable, the effect of the aid is unmistakably to provide desired financial support for nonpublic, sectarian institutions.[163]

CONCLUSION

Tuition tax benefits have a primary effect that advances religion by encouraging and helping parents to send their children to parochial schools. The Supreme Court has held that such an effect renders a government aid program violative of the establishment clause. It should find no differently with the Minnesota statute at issue in *Mueller v. Allen*. Congress, too, should cease all consideration of such proposals, for a national tuition tax benefit program, as much as a state program, would violate the establishment clause of the Constitution.

Nancy Lauren Savitt

(1979); Kosydar v. Wolman, 353 F. Supp. 744, 748 n.1 (S.D. Ohio 1972) (98% of nonpublic school students in Ohio), aff'd mem. sub nom. Grit v. Wolman, 413 U.S. 901 (1973) (see discussion at note 130 supra).

[162] The court in *Kosydar v. Wolman* stated:

> Such aid may be less direct and less capable of precise measurement than a grant to the schools themselves; yet if some parents will now be able to send their children to these schools or if fewer parents already utilizing them will be forced to withdraw their children, [the schools] will be aided.

353 F. Supp. at 762. The decision of the three-judge district court, which struck down a tax credit for tuition expenses not in excess of $90, presaged the Supreme Court's rationale in *Nyquist* and was summarily affirmed, see Grit v. Wolman, 413 U.S. 901 (1973), on the day that *Nyquist* was decided. Thus it is clear that tax credits are impermissible.

[163] 413 U.S. at 783 (footnote omitted).

Senator BOREN. Also, I want to again get it into the record—I understood you to say that the Minnesota experience which has been so widely cited here this morning, in fact it was the only slender reed of experience that even approached any kind of statistical basis with the sweeping statements made in the President's letter and by the Secretary of Education this morning, that that is a program that has very distinct differences from the bill now before us.

Mr. DERSHOWITZ. Well, the same bill was declared unconstitutional in Rhode Island, virtually the identical bill.

Senator BOREN. To the one we are now considering?

Mr. DERSHOWITZ. To the one in Minnesota. Minnesota and Rhode Island had almost identical bills. The one in Rhode Island was declared unconstitutional. The one in Minnesota was upheld.

The essence of the argument made by the Court of Appeals in upholding the constitutionality was that it applied across the board—it applied to private as well as to public institutions, and that its broad application made it acceptable. I think that argument is deficient, but at least that was the essence of the justification.

Senator BOREN. So under the Minnesota law if a public school charged tuition, there would be a tuition tax credit given to the parent of the student in the public school?

Mr. DERSHOWITZ. That is correct. I think the figures, though, given in the article in the New York University Law Review, demonstrate that if you look at it from a student-cost factor, a 142-times greater amount goes to the private sector than to the public sector using the figures from Minnesota—142 times greater per student

Senator BOREN. Well, I think that's an important point. And the distinction between this bill and the Minnesota law is also a very important one to make, and I'm sure there may be several Members of the Committee who will want to offer amendments to change this particular bill before us. I agree it would not begin to solve all of the problems or all of the problems I have with it, but at least it would be perhaps an improvement along with refundability as well, and I am sure there are a number of us who will help those Members on the Committee who have espoused support for this bill. We will help them to write into this bill the refundability provision which they want in, too. We want to be helpful to them in their efforts to include it in this bill, and we will be supporting those kinds of amendments when they come along again.

I think Senator Durenberger may have some last questions of the panel.

Senator DURENBERGER. Thank you very much. Just probably very quick questions, at least hopefully quick questions.

I haven't read all of your statements, whether any one is taking a constitutional position, but does it make any difference whether or not States like Minnesota are going the tuition tax credit route? Does a State, in your opinion, run up againt the same objections in your mind that the National Government does?

Mr. DERSHOWITZ. Well, I think from a constitutional point of view the Minnesota statute I hope will be held unconstitutional.

As I had mentioned to Senator Boren a moment ago, a similar statute, almost an identical statute, was held unconstitutional in Rhode Island.

Even if the Supreme Court were to uphold the constitutionality of the Minnesota statute, which I hope it will not, under the argument that was made in the Court of Appeals the proposed bill would probably still be unconstitutional. It would not save the constitutionality.

Senator **DURENBERGER**. The one before us?

Mr. **DERSHOWITZ**. The one before you. The main reason is that that bill only provides tuition tax credits to private schools, not to public schools, and that was one of the main distinctions that was made.

In addition, I think that if you put in a refundability provision, under the clear language in two of the prior Supreme Court decisions, it would demonstrate the clear unconstitutionality of this bill, because you would in effect be giving money to people in return for their having sent their children to a religious institution. It's a payment, a straight payment, to them for having sent them, because they are getting $300 additional money put into their pocket. So you are rewarding them for practicing their religion.

Senator **DURENBERGER**. One last quick question.

The NAACP has a position against vouchers. Is that public, private, any kind of vouchers?

Mrs. **SIMMONS**. Any kind of voucher.

Senator **DURENBERGER**. How about the other organizations?

Mr. **DUNN**. The Baptist Joint Committee and the Americans United also oppose voucher systems.

Senator **DURENBERGER**. For a public school as well as private school?

Mr. **DUNN**. Yes.

Mr. **DERSHOWITZ**. And the American Jewish Congress does, also.

Senator **DURENBERGER**. Are your positions on vouchers stated in your statements?

Mr. **DERSHOWITZ**. No.

Mr. **DUNN**. We were addressing only this legislation.

Mrs. **SIMMONS**. In this testimony, no, but we will seek to amend it.

Senator **DURENBERGER**. To the degree that you have an articulated statement that has been adopted by your organizations against vouchers, and to the degree that it deals with public education, I think it would be appropriate to have it made a part of the record.

Mrs. **SIMMONS**. We will do that.

Mr. **DERSHOWITZ**. We will do that.

Senator **DURENBERGER**. Thank you.

[The information follows:]

STATEMENT

OF

LEO PFEFFER

At a Hearing on Private Schools

May 13, 1981

on his own behalf
and on behalf of

AMERICAN JEWISH CONGRESS and
NATIONAL COALITION FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY and
NEW YORK COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY

I have been invited by this Committee to set forth my views in relation to the constitutionality of proposed legislation for governmental financing of religious schools.

The views I express herein are limited to the issue of constitutionality. This, of course, is by no means the sole question to be passed upon by this Committee. Not all that is constitutional is necessarily desirable, and for many other reasons I believe such legislation to be contrary to wise national policy.

I am special counsel to the American Jewish Congress, and general counsel to the National Coalition for Public Education and Religious Liberty (National PEARL) and the New York Committee for Public Education and Religious Liberty (New York PEARL). These organizations have requested me to inform this Committee that the views expressed herein are shared by them, and that to the extent dealt with in this statement it be accepted by this

Committee as their statement as well as my own. They will submit their own statements dealing with the public-policy and other non constitutional aspects of the measures under consideration by this Committee - specifically upon the disastrous consequence upon an already sorely troubled public school system that would inevitably flow from their enactment. I should like to state for the record my agreement with the statements that will be submitted to this Committee by these organizations.

Since I appear here as an expert witness, it is appropriate that, in the manner relating to the qualifying of expert witnesses in litigation, I briefly set forth my own qualifications.

In addition to my status as counsel for the American Jewish Congress, the National Coalition for Public Education and Religious Liberty and the New York Committee for Public Education and Religious Liberty, I have for the past 16 years been professor of constitutional law at Long Island University. I have written seven books and numerous articles in law reviews and political science journals on the subject being considered by this Committee. Within the past year two of my articles have appeared respectively in the Minnesota Law Review and the St. Louis Law Review. Three other articles are scheduled for appearance within the next several months in The Journal of Church and State, Law and Contemporary Problems and the New York Law Review. Finally, I have been requested by the editors of the Encyclopedia of the American Constitution, and am now in the process of writing ten articles on the subject of religious freedom and church-state separation, to appear in the Encyclopedia, scheduled for publication in 1987, the biceneennial anniversary of the adoption of the Constitution.

In addition to my qualifications as teacher and author, and perhaps most relevant here, I have argued before the Supreme Court more cases on the subject here in consideration than any other attorney in American history. Beginning in 1968 with the case of Flast v. Cohen. [1] which established a taxpayer's standing to challenge unconstitutional expenditures in support of religious education, and up to the present time I have argued the majority of Supreme Court cases that this Committee will be considering in the present hearings. In practically all Supreme Court cases in which I did not represent a party to the litigation, I submitted amici curiae briefs supporting the party invoking the Establishment Clause as an unsurmountable barrier to the legislation under consideration by the Court.

Before addressing myself to the relevant Supreme Court decisions, two additional comments, I think, are appropriate. First. I suggest that there is some disingenuity in the nomenclature utilized to describe measures such as these here in consideration. They are not designated as bills seeking to finance the operations of church related or religious or parochial schools, but rather of "private" or "non-public" schools. The disingenuity rests in the fact that at least as far as the First Amendment is involved, there is no constitutional barrier to governmental financing of private schools that are not religious.

But were the measures here under consideration limited to secular preparatory schools, such as Eton and Harrow, that cater exclusively to high upper-income families, it is doubtful that we would be engaged in the present hearings, assuming that any member of Congress could be induced to introduce such a measure. Inasmuch as almost all non-public schools are sectarian and enroll practically all pupils attending non-public schools, [2] use of the term "private" or "non public" in urging aid to religious schools smacks somewhat of selling under false pretense.

The second, and more important, comment I should like to make before touching upon court decisions, relates to the governance of public and of religious schools. The former are governed by school boards elected by all the people in the respective school districts including those who have no children in the public schools or indeed have no children at all. Should the community be dissatisfied with how a public school system is conducted they have the power to vote in a new school board. On the other hand, the constitution that guarantees the right of parents to send their children to religious schools (as held in Pierce v. Society of Sisters [3']) and excludes the public from exercising control over what and by whom the children are there taught, is the same one that forbids public funding of these schools. After all, we established ourselves as an independent nation because we deemed taxation without representation to be tyranical.

Coming now to a consideration of the Supreme Court decisions relevant to proposed legislation here being considered, it should be noted that most of them involved state rather than Federal statutes. The reason for this is quite simple: under our federal system, education is primarily an obligation of state rather than national government and litigation in respect to governmental financing is most likely to arise in respect to state statutes. There have been some suggestions that the Supreme Court's decisions on state financing may not be fully applicable to Federal statutes, and that the Court may be more tolerant in respect to the latter inasmuch as Congress and the Judiciary are coordinate branches of government.

Nothing in the Court's decisions supports any such distinction. The Establishment Clause is found in the First Amendment, which, since Barron v. Baltimore,[4] has been held to apply only to the Federal government: application to the states is purely subsidiary, arising from the Due Process Clause of the Fourteenth Amendment. Logic would therefore impel the conclusion that if there is a difference in stringency as between state and Federal legislation application of the Establishment Clause should be more stringent in respect to the latter.

There is, however, no need to resort to logic in respect to this point. In its first opinion seeking to define the meaning of the Establishment Clause in respect to governmental financing of services related to parochial school instruction, Everson v. Board of Education,[5] the Court said: "Neither a state nor the Federal government...can pass laws which aid...religion," and that ruling has not been questioned in any subsequent decision.

In Everson the Court upheld the constitutionality of a law providing for state financing of transportation to parochial schools. There is considerable language in its opinion to justify the conclusion that the statutory purpose, or at least the major statutory purpose, was deemed to be the protection of children from the hazards of the road and that the resultant benefit to the parochial schools was merely an incidental byproduct. The law therefore was one relating to health, safety and welfare rather than educational interests. Later decisions establish that the Court does not consider violative of the Establishment Clause statutes in the former category. Among these are laws providing meals and medicine dental, speech, hearing and psychological diagnostic services.[6] Therapeutic, guidance and remedial service (including those rendered in mobile units) that are offered only on sites not physically or educationally identified with the religious school and are administered by public employees are in the same category and are therefore also constitutional.[7]

The Court, however, has made it clear that in respect to transportation only that between home and school may constitutionally be funded. It refused to allow funding of field trips to visit "governmental, industrial, cultural and scientific centers designed to enrich the secular studies of students.[8]

A similar tightening of permissible financing was imposed by the Court in respect to the furnishing of secular textbooks for use by pupils attending parochial schools. Originally, held constitutional in *Board of Education* v. *Allen*,[9] and reaffirmed in *Meek* v. *Pittenger*,[10] the Court has refused to allow financing of instructional material and instructional equipment (e.g., projectors, science kits, tape recorders, etc.) allegedly not supplied to the religious schools but only loaned to the pupils or their parents though stored and used in the school premises. Nor, the Court held, was it permissible for the state to provide to the school or pupils non-reusable materials, such as drawing books.

These decisions are understandable only in terms of unavoidable *stare decisis*. A majority of the Court were patently unhappy with both *Everson* and *Allen*, but a majority of this majority felt themselves bound by these cases, and therefore limited themselves to restricting these decisions to the limits upheld therein.[11]

In respect to other efforts towards financing religious school operations out of tax-raised funds, the Court was not so limited. Beginning with Lemon v. Kurtzman.[12] it handed down a series of decisions which, on the whole, concluded that at least on the elementary and secondary school levels tax raised funds could not constitutionally be used to finance educational services in these schools beyond the narrow limits of Everson and Allen.

In Everson the Court first stated and applied what became known as the no-aid test. Under that test a statute violated the Establishment Clause if it aided religion, used tax funds to support religious activities or institutions or involved government participation in religion or religious participation in government. Beginning with Lemon the Court applied a somewhat differently worded, three-prong test, under which a statute violated the Clause if its purpose was to advance religion, its principal effect was to advance or inhibit religion or if it resulted in excessive government entanglement with religion.

In respect to the purpose criterion the Court has consistently ruled that in aid-to-education cases, the test was not violated if a challenged statute had a dual purpose, one secular and the other religious[13] The same is not true in respect to the effect and entanglement criteria, the Court has fairly consistently held constitutionally impermissible either on one ground or the other statutes providing aid to parochial schools.

Thus, in Lemon the Court invalidated Pennsylvania and Rhode Island statutes providing for state payment towards the salaries of parochial school teachers to the extent that they taught secular subjects. In Levitt v. Committee for Public Education and Religious Liberty,[14] it held that since testing was part of the teaching process, New York could not finance the cost of preparation and grading of tests - even those in secular subjects.[15] In Meek v. Pittenger[16] it invalidated a Pennsylvania law that provided what were called "auxiliary services," such as remedial reading, psychological services going beyond diagnosis, and guidance and counseling, all by state-paid personnel who came into the premise of the parochial schools to administer them.

Most pertinent to the subject being considered by this Committee is the Court's decision in Committee for Public Education and Religious Liberty v. Nyquist.[17] There the Court invalidated all of a three part program to finance (1) maintenance and repair of parochial school facilities, (2) tuition reimbursement for parents of pupils in these schools, and (3) tax relief to parents of such pupils.

In an obvious effort to avoid unconstitutionality under the second of these parts, advocates of aid to religious schools in California have contrived what is called the educational voucher plan. Under this plan, parents would receive from the government vouchers which could be legal tender only if used for tuition payment. However, unlike the tuition reimbursement plan invalidated in Nyquist, these vouchers would be issued to all parents irrespective of their economic status, as well as of course their religion or race.

Professor Lawrence Tribe, in his book American Constitutional Law[18] expresses the view that notwithstanding Norwood v Harrison,[19] holding unconstitutional under the Equal Protection Clause a book-lending program insofar as it aided racially segregated schools. the voucher plan is constitutional "so long as aid is channeled only to parents and children."

For my part, I cannot agree with this conclusion. To me it seems difficult to see how constitutionality can depend on whether the voucher, exchangeable by the school for the currency of the realm, is sent directly to the school or brought to it by the parent or child. Devices to evade the Establishment Clause considerably more subtle than the voucher plan have been rejected by the Court.

In any event, I think that the voucher plan could not escape judicial nullification unless it were modified in such major aspects as to make it unworkable, undesirable or both. In the first place, in order to avoid challenge as sexually discriminatory, schools would be required to accept applicants irrespective of sex, and possibly also could not segregate them in classrooms. To avoid economic inequality the schools could not constitutionally impose tuition payments in addition to those received from the government through vouchers. Moreover, the voucher-funded private schools could not constitutionally reject applicants because of the inferior academic ability or even because they would constitute discipline problems; nor could they expel pupils who receive poor grades or who disturb the school regimen, any more than public schools can. They could not impose religious instruction, Bible reading or prayer upon the pupils, nor even post the Ten Commandments or other religious symbols in the classrooms.[20] Above all, it could not reject the legal tender preferred by an applicant for admission because he is not of the right religion any more than a governmentally funded hospital could reject patients because they are not of the right religion.

Legal tender can be used for any purpose. Economically disadvantaged recipients of welfare funds can use the funds for whatever purpose they deem fit, including contributing them to churches. But vouchers that can be used only for tuition payments are not in the same class. Fictions should not be resorted to so that the restrictions imposed by the Establishment Clause can be so patently evaded.

I turn now to the last part of the Court's decision in Nyquist, the one involving tax relief to parents of parochial school pupils.

Under the New York statute parents could subtract from their adjusted gross income for state income tax purposes a designated amount for each dependent for whom they had paid at least $50 in tuition The amount of deduction was not dependent upon how much the taxpayer actually paid for tuition, and was given in addition to any deductions to which the taxpayer might be entitled for other religious or charitable contributions. The tax benefits were computed so that they would pick up at approximately the point at which tuition reimbursement benefits left off.

It should be noted that there was disagreement among the parties as to how to designate the benefits granted by the statute. The plaintiff contended that the law, in effect, was one establishing a system of tax "credits." The State and intervening defendants rejected that designation and urged that they were tax "modifications." The Solicitor General, in an amicus curiae brief, referred to them as "deductions." The District Court and the Supreme Court agreed with the plaintiffs that although in form they were tax deductions in effect they were more like tax credits. However, what is significant here is that the Court did not consider the characterization as material. "We see," the Court said, "no reason to select one label or another, as the constitutionality of this hybrid benefit does not turn in any event on the label we accord to it."

I call this to the attention of the Committee in order respectfully to suggest that in considering the various bills introduced to accord tax benefits for religious school tuition, no significance should be given to the nomenclature employed by proponents of the measures.

It should, however, also be noted, that in a footnote in Nyquist the Court stated that since the New York program did not have the elements of a genuine tax deduction, such as those applicable to charitable contributions, it was not necessary for it to decide whether that form of benefit would be constitutionally acceptable under the "neutrality" test in Walz v. Tax Commission. [21]

The question left open in Nyquist is answered, at least in respect to the proposals now being considered by this Committee, in the Supreme Court's affirmance of the Court of Appeals decision in Public Funds for Public Schools v. Byrne. [22] There the Court affirmed without opinion a Court of Appeals decision holding unconstitutional a provision in the New Jersey general income tax law reading as follows:

> (b) Additional exemptions. In addition to the personal exemptions allowed in (a), the following additional personal exemptions shall be allowed as a deduction from gross income:
>
> . . . . . .
>
> 2. For each dependent who qualifies as a dependent of the taxpayer during the taxable year for federal income tax purposes -- $1,000.00 plus, for each dependent child attending, on a full-time basis an elementary or secondary institution not deriving its primary support from public moneys -- $1,000.00.

Footnote 11 in the decision of the Court of Appeals reads as follows:

> The Supreme Court has reserved the question whether "a genuine tax deduction, such as for charitable contributions" would satisfy the neutrality test in Walz. Committee for Public Education and Religious Liberty v. Nyquist, supra, 413 U.S. at 790 n. 49. As we interpret the phrase "genuine tax deduction" it refers to the comprehensiveness of the tax relief granted by a challenged statute. Because New Jersey's scheme is

insufficiently comprehensive, the law questioned in this case does not create a "genuine tax deduction."[23]

What the Supreme Court's affirmance of Byrne as recently as 1979 establishes is that the Supreme Court has manifested no intention of retracting from its decision in Nyquist, and that decision is still the supreme law of the land, binding upon Congress as upon all other legislative and executive bodies. It follows from this that in passing upon those measures before this Committee which purport to provide a "tax deduction" for religious school tuition, careful scrutiny is required to make certain that the benefit sought to be provided is truly a "genuine tax deduction," and is "sufficiently comprehensive."

Although Byrne is the most recent case indicating that the Supreme Court has no intention of overruling or retracting from its decision in Nyquist, it is by no means the only one. In Minnesota Civil Liberties Union v. Minnesota[24] it refused to review a state court decision holding unconstitutional a law granting tax credits for parochial school tuition. The same conclusion was reached in Grit v. Wolman[25] in respect to an Ohio statute that provided income, sales and property tax credits to parents of religious school pupils.

The First Amendment's bar against use of tax-raised funds to support religious schools stands high in our scale of constitutional values, so high as to accord litigant status to any taxpayer seeking to challenge such use.[26] It would, I suggest, seriously impair if not fatally affect that value if Congress were to enact measures such as those seeking to evade the mandate through such devices as tuition grants, educational vouchers, or tax credits or deductions.

Respectfully submitted,

Leo Pfeffer

Leo Pfeffer

FOOTNOTES

1. 392 U.S. 83 (1968).

2. The situation in Ohio, as indicated in Wolman v. Walter, 433 U.S. 229 (1977) is typical. The record there showed that of the 720 chartered nonpublic schools all but 29 were sectarian and of these more than 92% were Catholic.

3. 268 U S. 510 (1925).

4. 7 Pet. 243 (1833).

5. 330 U.S. 1, 15 (1947).

6. Wolman v. Walter, 433 U.S. 229 (1977).

7. Ibid.

8. Ibid.

9. 392 U S. 236 (1968).

10. 421 U.S. 349 (1975).

11. Support for this assertion is to be found in footnote 56 of the Court's opinion in Committee for Public Education and Religious Liberty v. Nyquist, 410 U.S. 907 (1973), wherein reference is made to "Mr. Justice Rutledge's forceful dissent in _Everson_."

12. 403 U.S. 602 (1971).

13. See, e.g., Levitt v. Committee for Public Education and Religious Liberty, 413 U.S. 472 (1973). It should be noted, however, that the same is not true in respect to a case involving religion in public schools. Epperson v. Arkansas, 393 U.S. 97 (1968); Stone v. Graham, 101 S. Ct. 192 (1980). In the latter case, the Court said:

> The Supreme Court cases cited by the dissenting opinion as contrary, _Committee for Public Education_ v. _Nyquist_,, _Sloan_ v. _Lemon_, _Lemon_ v. _Kurtzman_, _Board of Education_ v. _Allen_, are easily distinguishable: all are cases involving state assistance to private schools. Such assistance has the obvious legitimate secular purpose of promoting educational opportunity. The posting of the Ten Commandments on classroom walls has no such secular purpose.

14. 413 U.S. 472 (1973).

15. It should be noted, however, that in Committee for Public Education and Religious Liberty v. Regan, 100 S. Ct. 840 (1980), the Court allowed payment to parochial schools for the costs incurred in administering certain state-prepared tests and taking and reporting pupil attendance.

16. 421 U.S. 349 (1975).

17. 413 U.S 756 (1973).

18. p. 845-46, note 33.

19. 413 U.S. 455 (1973).

20. Stone v. Graham, 101 S. Ct. 192 (1980).

21. 397 U.S. 664 (1970).

22. 590 F. 2d 514, affirmed, 99 S. Ct. 2818 (1979).

23. Ibid. The issue was directly presented and decided upon in Rhode Island Federation of Teachers v. Norberg, 479 F Supp. 1364 (1979). There the District Court held that a deduction from gross income for tuition to religious schools violated the Establishment Clause.

24. 421 U.S. 988 (1974), denying certiorari from 224 N.W. 2d 344.

25. 413 U.S. 901 (1975), affirming Kosydan v. Wolman, 353 F. Supp. 774.

26. Flast v. Cohen, 392 U.S. 83 (1968).

STATEMENT BY JOSEPH B. ROBISON

On Behalf of American Jewish Congress

At Hearings on the Voucher Plan

Before the Subcommittee on Employment,
Manpower and Poverty of the Senate
Committee on Labor and Public Welfare

The American Jewish Congress welcomes this opportunity to express its views on the voucher plan at these hearings on the bill to authorize continuation of the programs of the Office of Economic Opportunity. We understand that the hearing today is devoted specifically to the question of sponsorship by the O.E.O. of a particular form of the voucher plan for the financing of education.

Under voucher plans generally, a state or other governmental agency gives to parents one voucher for a specified sum of money for each school-aged child. The parents apply to any school of their choice -- public or private -- denominational or nondenominational -- and the school which accepts the child is paid the sum specified in the voucher.

The American Jewish Congress opposes institution of voucher plans because we believe that any such plan would impair two vital aspects of our system of democracy -- publicly financed and publicly controlled schools and the separation of church and state.

The voucher plan is designed to deal with serious problems facing the public schools, the foremost being their failure to meet the educational needs of the disadvantaged. However, we do not believe that the voucher plan, in any form, would deal effectively with that problem. In practice and effect, the only nonpublic schools receiving voucher funds would be those already in existence (predominantly church affiliated) and those that would be established to cater to the upper classes.

The O.E.O. has been sponsoring a particular form of the voucher plan developed by the Center for the Study of Public Policy. Because of the central role played in the development of this plan by Professor Christopher Jencks of the Harvard University Grade School of Education, it is commonly known as the "Jencks Plan." The plan is described in a report entitled, "Education Vouchers" published by the Center.

We are well aware that the Jencks version of the voucher plain contains an elaborate structure of safeguards designed to prevent it from being used to foster racial segregation and to increase the likelihood that the schools financed by the plan will deal effectively with the grave shortcomings in the education now being supplied to the children of underprivileged families. We do not think those safeguards would work.

A great deal of the support for the Jencks voucher plan rests on the argument that the public schools of this country are in a state of collapse and can only be rescued by the competition of school systems financed by vouchers. In fact however, with one tragic exception, the public schools of America have performed well over the years in providing quality education to our children on an equal basis. They have also served as a vital point of contact between the social classes and between racial, ethnic and religious groups.

The exception, of course, and the chief failure of the public schools has been their wretched treatment of certain minorities, primarily blacks and Indians. For those groups, the public schools have meant neither quality nor equality. But, since that is nothing new, one must look elsewhere for the present concern about education.

What do people have in mind when they talk about a "public school crisis"? Failure to do the basic job of education, as witnessed by educational retardation and a high drop-out rate; disorder, disruption and violence in the classroom; the unattractive image of the school as a deteriorating building ruled by a rigid, grim formalism; a teaching system that convinces many pupils of their own inadequacy; and lack of responsiveness to parents and others in the community. With the possible exception of the last of these items, these are the problems of the large metropolitan schools. They result from a number of factors which boil down to one thing -- the unwillingness of our society, in the past and now, to do the educational job that needs to be done for the underprivileged -- usually black -- child.

The suburban and rural schools, not plagued by the problem of high concentrations of minority group children, are still functioning well. Even on the thorny issue of responsiveness to parents, they are less subject to criticism than the massive city systems. As a result, there is less criticism of undue rigidity and reluctance to change. In other words, the rural and suburban schools are still, by and large, doing the fundamental job for democracy that the public schools have done right along. The problem is in the cities, and it is due to the refusal of the great, satisfied, white majority to do the right thing by the minority that needs help.

The voucher plan would not deal effectively with this problem. The only thing one can say for sure is that a voucher plan would benefit existing nonpublic schools, most of which are church-affiliated. However, that is not the stated aim of the principal voucher backers. It is rather to generate a complex of new nonpublic schools, catering to those who are dissatisfied with the public schools. The theory is that, with financing available, private entrepreneurs and groups of parents will enter the education business and produce competing systems offering what the public schools lack.

However, any voucher plan likely to be adopted would do nothing for those who need it most. As the Center which has sponsored the Jencks plan recognizes, it would be necessary in any voucher plan to retain the present minimum standards for curriculum, teacher training, adequacy of facilities and so forth and to limit the amount of tuition to be charged. It would also be necessary, in our democracy, to require fair selection procedures. As such safeguards were imposed, however, the ardor of would-be school builders would cool. At the level of complexity of the Jencks plan, it would drop below freezing.

To take but one example, the Jencks plan incorporates a lottery system as the "most promising device for preventing discrimination." (Considering that it would apply to only half the admissions and that various preferences would be given to such groups as children of founders and brothers and sisters of attending pupils, this device is not very "promising.") Yet, the Report recognizes that operators of private schools "would consider the diminution of their control over entry undesirable" (p. 78). It goes on to say, "We have no doubt that lottery requirements would discourage some people from starting voucher schools." Indeed it would.

It must be remembered that, at least for the "business enterprises" that are supposed to be attracted to education by the voucher plan, there will be a strong incentive to keep expenses low. One cannot do this if one accepts a high proportion of "difficult" children. There will therefore be a strong tendency to select the easily educated child. The incentives to accept the difficult children proposed in the Jencks plan are not likely to be adopted by any state legislature and are even less likely to be enforced, if adopted. In fact, this is recognized in the Center's report which notes that "Voucher schools are likely to recruit selectively if they can" (p. 62) and that "many are likely to encourage students they do not want to withdraw" (p. 85). It says further (p. 62): "No system can eliminate these practices entirely or avoid all their undesirable consequences. Some system of public regulation can, however, help."

Experience with government programs involving the spending of money strongly suggests that public regulation would help very little. One may lay down as a law of public administration that safeguards in such programs do not safeguard. The pressure to get the program going, to spend the money, is overwhelming. Any statutory limitations that retard that process tend to be ignored. What this means in the case of voucher plans is that the only schools promoted would be those designed to serve, and in fact serving, the economically and educationally advantaged child.

The effect of this on the public schools would be devastating. It must be recognized that, on the day that a voucher plan goes into effect, the public schools are automatically "marked lousy." Under any voucher plan -- even the Jencks plan with all its safeguards -- the public school will be the place that you go if you do not get into a nonpublic school. And under any voucher plan, there will always be a certain proportion of children who go to a public school solely because they failed to get into a nonpublic school. It may be true that, at the beginning, there would be a substantial number of children going to public schools as a result of their parents' choice. The fact that the public school is also the place for "rejects" would rapidly reduce the number of parents making that choice.

This factor also answers those who say that vouchers would shake the public schools out of their lethargy and cause them to compete with the new voucher-financed private schools. State agencies rarely compete with private agencies and then only when they have vigorous support from politically effective elements in the population. Once a public school system was branded as a dumping ground, it would lose all chance of that kind of support.

In sum, it is illusory to hope that vouchers would induce independent entrepreneurs to build any significant number of schools for disadvantaged children. Neither could they be compelled or induced to do so either by statutory safeguards against discrimination -- racial, economic or educational -- or incentive payments to encourage acceptance of underprivileged children, such as those proposed in the Jencks Plan. True, a few militant minority organizations and parent groups might undertake establishing independent schools. Such a movement, however, would not make more than a small dent in the massive educational deficit in deprived areas. Meanwhile, the bulk of the private schools brought into existence by the voucher program, at least aside from church-affiliated schools, would be selective and, in effect, discriminatory. Their existence would accelerate the flight from the public schools of favorably placed families.

Meanwhile, the plight of the public schools would worsen. Acceptance of the voucher plan, even on an experimental basis, would deflect the attention of the public and of public officials from what should be their primary concern in education, overhauling the public school system so that public schools work for all students.

The threat to separation of church and state is no less grave. While it is doubtful that the voucher plan would significantly increase the number of nonsectarian nonpublic schools, there is no question that it would give massive aid to the existing system of sectarian schools. Regardless of technical formulas designed to evade constitutional problems, the simple fact is that voucher plans would make possible the creation and continuance of religious schools -- that is schools established for the purpose of fostering specific religious tenets. That would be a plain violation of the principle of separation of church and state, under which religion has prospered in this country.

There is one aspect of this issue to which I wish to call this Committee's particular attention. The Center report, which embodies the Jencks Plan, is very vague on one critical matter -- whether religiously affiliated schools participating in the voucher plan will be permitted to discriminate in admissions on the basis of religion and whether they will be permitted to require that students accept instruction in the religion of the sponsoring church. (Schools that admit without regard to religion but which require all students to take instruction in a particular sectarian dogma must obviously be treated as discriminating.) There are a number of statements in the report that "discrimination" will not be permitted but it is not clear that they apply to discrimination based on religion.

This creates a dilemma. If the schools are permitted to discriminate, problems are raised not only under the constitutional requirement of separation of church and state but also under the constitutional guarantees of equality. It would certainly be wrong, and we believe the courts would hold it unconstitutional, for educational institutions discriminating on the basis of religion to receive substantial government funds. On the other hand, if the participating schools are not permitted to discriminate, large numbers would be excluded from the voucher plans. It seems unlikely that, with such an exclusion, the voucher plan would be accepted as a solution to our educational problems.

The American Jewish Congress has fully supported the program for combatting poverty entrusted to the Office of Economic Opportunity and we support continuation of that agency. However, we urge this Committee to insure that any legislation it recommends for the continuance of the O.E.O. contains provisions barring further O.E.O. support for any version of the voucher plan.

REPORT ON AMERICAN
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CONTROVERSY

The School Voucher Plan:
The Case For & Against
Bernard Fryshman / Florence Flast

ARTICLES

The Arab Terrorists
in West Germany
Herbert Freeden

Rabbis, Priests & Ministers
Allan S. Maller

BOOKS & ARTS

Shad Polier & Justine Wise Polier / Theodore Bikel
Harold Ticktin / Meir Zvi Ribalow / Will Maslow

Viewpoints

The Voucher Plan: The Case For and Against

Bernard Fryshman / Florence Flast

For: Bernard Fryshman

About eight years ago an editorial cartoon appeared which depicted Barry Goldwater addressing the poor, saying in effect, "If you don't like being poor go out and inherit a department store." In essence, this is what we are telling impoverished parents across the country who are desperately unhappy with the education of their children. "If you don't like your children's schools, be rich and send them to a private school."

Of course, not everybody is unhappy with the results of public education. Messrs. Megel and Bhaerman of the American Federation of Teachers state: "We reject outright the premise that education has failed. By and large, the American public schools are in the hands of underpaid, overworked school teachers serving in overcrowded classrooms. Nevertheless, they have done the finest job of any school system in the world. Our scientific progress, our jet and supersonic planes, our rockets that placed a man on the moon, our engineering, our technical, our financial and cultural achievements found their basis in the public schools of our nation."

Parents in our Inner Cities will be most gratified to hear about the successes of our public schools.

One understands the position of the AFT a little better when the same authors state, "It appears that both the American Federation of Teachers and the National Education Association recognize the likely threat that performance contracting poses to personnel they represent."

One understands, but certainly one need not accept statements that disagree with overwhelming evidence showing that for a significant proportion of our population, public education has failed. This has long been recognized by government agencies. To quote Dr. Glennan, director of research and evaluation of the OEO, "In school system after school system we have found enormous numbers of poor children who are far behind the skill levels that we would judge to be appropriate and indicative of future competence in our society."

Among several solutions that have been proposed, one of the most interesting is the voucher system. Quoting Dr. Glennan again, "The basic idea of a voucher system is relatively simple. A local public agency issues a voucher to parents. The parents take the voucher to the school of their choice. The school returns the vouchers to the agency. The agency then sends the school a check equal to the value of the voucher. As a result, public subsidies for education go only to schools in which parents choose to enroll their children. Schools which cannot attract applicants presumably do not remain in business."

The advantages of such an approach are many and varied. Primarily it would give the poor the same freedom of choice of schools now available only to wealthier parents. It would encourage competition and diversity in approach, in content, and in educational methodology. And it would place a premium on educational success. A school that did not measure up would "not remain in business." Present parental tensions surrounding the schools would be eased considerably as attention would be focused on one aspect only—whether the school was teaching the children properly. Nor would dissatisfied parents need to resort to activist approaches to accomplish change.

Parents would play a primary role in determining the quality of their children's education; a larger range of choices in any community would mean that schools could adapt to the needs of specific groups of children rather than have all children fit a given mold. Community groups whose only contribution has been to criticize the present educational system would be free to open their own schools and either "produce—or perish." Much of the educational "expertise" of extremist groups would be shown to be a sham—and the schools would no longer be a hotbed of racism. Most parents supporting such extremist groups do so only because they promise an alternative. With the advent of the Voucher Plan, promises would rapidly have to become performance, and the blandishments of certain groups would have no meaning if they couldn't teach as well as other schools.

Integration would have real meaning for the first time. White parents oppose sending their children to integrated schools only because the behavior patterns of some Inner City children are too violent to allow an effective educational environment to exist. Public schools are powerless to deal with the problem; private schools are not constrained to accept students unwilling or unable to meet certain standards of behavior, and effective learning in an integrated setting can take place much more easily in a private school. This doesn't mean that white parents will initially send children to Inner City private schools—but it does mean that people living in urban areas will no longer be as opposed to integrated schools in their neighborhoods as they seem to be at present. The advantages of an integrated education are many, and a school where discipline can be enforced properly will attract whites and blacks in surprising numbers. Nor is the problem child necessarily doomed

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to some educational "dump." Private schools which emphasize athletics or music or arts or vocational skills can be set up and financed as easily as schools which emphasize science or mathematics.

That the Voucher Plan has much to offer the Inner City parent is undoubted. And as a corollary, it has much to offer society. Certainly, there seems to be no a priori reason that extensive experimentation should not take place. Unfortunately, education is now the nation's largest industry. The Voucher Plan promises to make significant changes in the manner in which billions of dollars will be spent.

It would be naive to expect members of the education "establishment" to accept a proposal of this kind with equanimity. We have already indicated the kind of reaction to be expected from the American Federation of Teachers—and statements from certain other teachers' groups are as predictably negative. Nevertheless, there are other groups genuinely concerned with the quality of our nation's children, groups that have no vested interest in the status quo, who have raised some objections which must be answered. Having already stated a case for the Voucher Plan, a discussion of some of the anticipated problems would now be in order.

"The Voucher Plan will encourage economic segregation." Not very likely. The truly wealthy have always sent their children to separate schools and will most likely continue to do so. If the Voucher Plan is introduced as planned, with the requirement that participating schools cannot require any additional payments, very few middle-class parents will opt for non-Voucher Plan schools.

"The public schools will be destroyed." Not necessarily. Experience in Quebec has shown that a high quality public school system continues to attract the vast majority of students in spite of the aid to private schools. Quality education is the only touchstone of success in a competitive situation; there are large numbers of public schools that would compete quite successfully. In fact, at present, in some areas, extremely wealthy parents continue to send their children to public schools.

"Support of religious schools would be forthcoming." Not in any objectionable sense. Present guidelines allow for support of secular education only—and also provide for support of schools subscribing to open enrollment for all. The Voucher Plan is in this sense no different from providing a Regents scholarship or GI Bill payments to a student attending a church-oriented university, or to providing medicare payments to patients at Catholic hospitals. And, of course, any excessive "involvement" by the government might remove religious schools from the eligibility lists. The courts will be no less jealous of church-state separation in this case than in any other.

"Parents, especially among the poor, will not be able to choose schools properly." There is a hidden element of elitism in this comment. "We" know what is best for "them." . . . Do we? Does a parent need a background in educational statistics to be able to determine whether her child is learning to read? Parents—poor and rich alike—are desperately interested in their children's education and are as adept as anyone else in determining whether learning is taking place. It would take no more than a year for any community to determine which of its schools was doing the job.

"Hucksterism would enter the educational market." Once again the proof will be in the pudding. A school that does not produce will not attract any "customers." A school that is unconventional but does succeed in educating its children will flourish. Certainly an "Ocean Hill-Brownsville" situation would never occur. Any group in the community could try its own approach. Should it succeed, it would draw from the public schools and/or cause changes in the local public schools. Should the group fail, all the invective in the world, all the blandishments, all the threats won't convince mothers to send children to "community schools."

"Some schools will remain out of bounds to certain groups." Impossible. All schools (under the Voucher Plan presently being proposed) will have to accept *all* applicants, and if there are too many applicants, at least half the students must be determined by lottery. At least as high a proportion of minority students would have to be accepted as had applied.

In addition to the above reservations expressed by concerned individuals, there are a number of objections by certain concerned groups and individuals which should be discussed.

The Voucher Plan "could lead to racial, economic and social isolation of children and weaken or destroy the public school system" (National Education Association). One statement is valid. The public school system could be weakened or destroyed—especially in areas where the public school system couldn't meet the challenge. But to say that the plan "could *lead* to racial, economic and social isolation" is to ignore the realities of today's almost complete isolation of children—and to refuse to consider the most important advantages of the Voucher Plan.

"The foundation of education is free public education" (National Association of State Boards of Education). Having assumed what is to be tested, the NASBE then proceeds to draw conclusions against the Voucher Plan. No doubt the *free* education is basic—but the precise reason the voucher experiment is needed is the question whether *our public* school system is the answer.

"Administrators would never know how long their student bodies would be stable." "Private schools would become de facto public schools" (David Tronsgard, executive director, NASBE). Both statements are quite accurate. And the first statement poses a very real problem, one for which there is no simple answer and which should be studied carefully in any experimental situation.

The second statement indicates precisely why the Voucher Plan is such a promising one. A private school would be "public" insofar as its accessibility to the average parent—and its being subject to state regulation are concerned. It has the advantage of being able to introduce educational innovations and standards of behavior unobstructed by the political and bureaucratic pressures. And, of course, parents are free to remove their children the minute it fails.

It is most difficult to understand the nature of the American Association of School Administrations objections. This organization fears that the schools "would be removed from public to private control—control by each parent." This is almost as serious as putting the government under the control of the voter. It also fears a massive bureaucracy "necessary to enforce safeguards and regulations." Anyone in the educational establishment fearful of the advent of a "massive bureaucracy" must be living in some world of his own! And, finally, the AASA objects to providing support "for those students in private schools who should not be supported by public, state, and local funds." In other words, one of the objections to the Voucher Plan is that it is a Voucher Plan.

The American Jewish Congress raises some interesting questions. "In practice and effect," we are told, "the only nonpublic schools receiving voucher funds would be those already in existence (predominantly church affiliated) and those that would be established to cater to the upper classes."

The AJC does not outline how one could establish a school to "cater to the upper classes" if even the poor could afford to send their children (vouchers in hand) to any school. And the AJC seems to ignore the experience of vocational and private trade schools—many of which have been opened to cater to welfare recipients, and which have, in thousands of cases, succeeded where the public schools have failed. In fact, a "Voucher Plan" already exists in the vocational school area. Welfare recipients are made aware of the nature of the schools, requirements, costs, etc., at the Labor Department—and they are free to choose a career goal on their own. Their tuition is paid for by the government. The fact that so many public school dropouts are able to learn successfully in private (nonchurch-affiliated) trade schools is a commentary on what might be expected from a Voucher Plan system introduced in the elementary and high school grades.

As always, the AJC takes a stand calculated to protect both the "Constitution" and "religion." No doubt, the Voucher Plan will be tested for constitutionality before the courts; the behavior of the AJC in this respect is quite predictable. However, the opinions of the courts are not quite as predictable and it seems rather strange to oppose experimentation because the AJC feels it would be "a plain violation of the principle of separation of church and state."

The stand of the AFT has been discussed previously and the opposition to the Voucher Plan is clearly based on the fear of loss of jobs or union power. One hastens to reassure the teachers' unions that all schools, be they public or private, employ teachers. One must also remind them that, in the final analysis, the welfare of the teacher must come after a consideration for the welfare of the student.

Finally, an article by Professor Eli Ginzberg of Columbia University, entitled "The Economics of the Voucher System," must be considered carefully. Professor Ginzberg is very disturbed at the failure of the government to effect any meaningful changes in a variety of social problems although several billion dollars have been spent. Are we to conclude then that experimentation is to stop? Or should we conclude that increased spending and experimentation should be intensified in a search for a solution to our social ills?

In some way, Professor Ginzberg concludes that the cost of the Voucher Plan to the taxpayer would be an increase of about $5 billion per year. This indeed is serious—but does Dr. Ginzberg consider that much of the opposition to increased aid to education comes from that large and vocal segment of the population whose children do not benefit from public funds? And that further opposition comes from others who feel that control of the schools has fallen into the hands of a nonresponsive, inefficient bureaucracy? Much of the public has lost the ability to sympathize with the problems of those trying to cope with the educational ills of our society. Should the Voucher Plan come into force, public support would increase in far greater proportion than educational costs.

Professor Ginzberg seems to equate private schools with either church schools—or with the schools usually associated with the wealthy. Experience with nursery and day care centers, with private trade schools, and with universities have shown time and again that the private (nonchurch-related) sector can do as good a job as the public schools, and certainly as cheaply. Certainly there will be church-related schools, and inward-oriented ghetto schools, and "upper class" schools. But there will also be vast numbers of quality private schools providing quality education at reasonable cost.

We are told that there will be problems insofar as "integration" is concerned. As mentioned above, the problem of whites fleeing black schools stems mainly from the fear of physical violence that pervades certain Inner City schools. Most black parents oppose this violence with as much fervor as do whites. And only in a private school setting can standards of discipline and behavior be enforced so white and black alike can learn effectively.

The comments that "one must consider the influence of demagogic leadership in persuading ghetto parents to opt for one or another alternative" and that it is "venturesome to postulate that many ghetto parents will have the time, energy, interest and background necessary to make informal judgments'" smack of the plantation philosophy. Should we "better" people "lead" the poor ignorant blacks to quality education? Professor Ginzberg would do well to go into the Inner City and listen to the evaluation by some of these same parents of their present schools. I would venture to say that on the whole the "poor" will make as intelligent decisions about their children's education as we make about ours. If they are given the chance.

Finally, Professor Ginzberg questions whether new quality private schools will be forthcoming. "To assume that there are many people capable of bringing new schools into existence, staffing them, and structuring curricula that would be more attuned to the needs and interests of the student body is a presumption contrary to fact." And "if well-run schools will be difficult to bring into existence, there is little basis for following the voucher route." Finally, "It is unlikely that hard pressed taxpayers will view with favor additional funds for new construction on the ground that 'competition' will have beneficial effects on performance."

These are serious questions, indeed. But with very clear answers. Part of the answer lies in the vast number of private nurseries, trade schools, and universities which now exist throughout the land. Part of the answer lies in some innovative teaching technologies which lie unused because of certain "job rules" of the bureaucracy. And part lies in the spirit and energy of Young America anxious to seek new answers and new approaches.

Insofar as "new construction" is concerned, my feeling is that the answer will be found in private investors and private contributors who will provide backing to educational innovation. It is also pertinent to note that a multimillion dollar building is not necessary to provide a good education.

I have tried to answer some of the objections raised by critics of the Voucher Plan—and I have tried to present a case for the benefits of the Plan. Certainly all individuals honestly concerned with quality education shoud encourage *experimentation* which would lead to an effective evaluation of the Voucher Plan as a proposed solution to the problems of educating our youth.

Against:
Florence Flast

It is ironic that Christopher Jencks, whose controversial recomendations for education vouchers were adopted by OEO in its search for school reform to aid the disadvantaged child, has now issued a report from the Center for the Study of Public Policy at Harvard, suggesting that school reform is not the answer after all.

According to a news story in the *New York Times* of September 13th, the Jencks report, based on extensive data gathered over the past ten years, concludes that "neither racial desegregation, nor compensatory education, nor preschool programs, nor increased school spending, nor anything the schools have tried has significantly affected inequalities in what Mr. Jencks calls "cognitive skills." . . . The schools merely solidify and certify cognitive inequalities that children bring to school with them. . . . The effects of schooling on cognitive skills depend on a single factor, namely, the characteristics of the children entering school.

"Everything else — the school budget, its policies, the characteristics of the teacher—is either secondary or completely irrelevant," the report finds.

So Jencks, along with other educational researchers and social scientists, including James Coleman, has concluded that a child's performance or success in school is more related to his family background than to any School- related factor. To a lesser degree, according to Coleman and others, his performance is also influenced by his peer group; these two factors being of greater importance than the equality of teaching, the per pupil cost, or the nature of the educational environment, with no distinction being made between public and private schools.

This is not to imply that we should now relax our efforts to improve the quality of education in our schools, to achieve integration, or to make the schools more responsive and relevant. However minimal their effect may be on school achievement, on social grounds alone these are essential to a democracy.

Unfortunately, the policies of the 60s made public education the whipping boy for all the ills of this society. It was easier to say that the public schools had failed than to face up to the realities of life in our cities, to the widening of the gap between the classes in our supposed class-free American system. But it is simplistic and dangerous to suggest that deeply ingrained racism, discrimination in housing and employment, inadequate health care, the imprisonment of minorities in ghettoes and in poverty are going to be resolved by education vouchers, enabling the victimized children to attend private schools of their choice.

The voucher proposal does not address itself to the causes of underachievement, to the causes of de facto segregation, to the inhibiting factors in the teaching and learning experience, nor does it address itself to the interrelationship of the many influences on the child, both in and out of school.

The exodus of the middle class to the suburbs in the aftermath of World War II and the flight of whites to nonpublic schools following the Supreme Court decision of 1954 caused the public schools to become more and more segregated, racially and economically. This was not solely a Southern phenomenon. It has been the pattern of every large Northern city and many smaller ones, amply documented by the United States Commission on Civil Rights.

Every plan to improve racial integration in the public schools was thwarted by the "white egress" to private and parochial schools, even before such plans were put into effect and despite an inferior quality of education in the latter, due to overlarge classes and poorly trained teachers. In the decade from 1955 to 1965 the rate of growth of nonpublic school enrollments was two and a half times that of public schools.

Professor Dan Dodson, Director of the Center for Human Relations and Community Studies, New York University, speaking at the U.S. Civil Rights Commission Conference on Education in 1962, said, "A good case could be made that the major thing we are teaching our children in today's world is how to hide. We are hiding in lily-white suburbs. . . . We are hiding in our churches, according to many observers of the American scene."

It is naive to believe that these middle and upper income parents and the schools to which they have fled will permit a voucher system to bring any significant number of low-income, minority group children into the schools their children presently attend. They would be more likely to forego the subsidies to protect separateness—economic as well as racial. For many it would not be a sacrifice. Sixty-three percent of all Catholic parochial school tuition is less than $100 a year and these schools represent about 90% of the available private alternatives. For a non-Catholic there are few alternatives to the public schools.

The report on the Voucher Plan prepared by the Center for Public Policy for OEO indicated that new schools were not likely to be established in the short term of the demonstration project and therefore recommended locating where a number of private schools already exist. These are bound to be all or majority religious schools. In New York State, statistics provided by the State Department of Education regarding enrollment in nonpublic schools in the Fall of 1968 were as follows: Catholic—85%; Jewish—5.9%; other denominations—2.7%; nonsectarian—6.4%. Most blacks (90%) are Protestant. Would they really have the private choice that the educational voucher promises?

And would not the availability of these vouchers to whites who could not otherwise afford private education encourage them to seek admission to these schools and, being of the proper faith, gain entrance in preference to the black Protestant? Would they not have the constitutional right to such preference on religious liberty grounds? And would not OEO then be providing Federal funds for the support and expansion of religious schools in violation of the First Amendment?

The courts have consistently barred

(Continued on page 21)

FLORENCE FLAST, vice-chairman of the Committee for Public Education and Religious Liberty, was formerly president of The United Parents Association and has served in AJCongress as chairman of its education committee.

Voucher Plan

(Continued from page 12)

public grants to parochial schools, finding their primary purpose to be "vehicles for promoting religious faith" and finding that any attempt to finance strictly "secular" education in such schools involves an excessive entanglement of government with religion.

The fact is that the concept of education vouchers did not originate with Christopher Jencks or OEO. The major proponent of the voucher was Virgil C. Blum, a Jesuit priest, who set forth his proposal for a voucher system in his book, *Freedom of Choice in Education* (1958). It was Rev. Blum who founded Citizens for Educational Freedom, the organization which lobbies for state aid to parochial schools and which significantly influenced the delegate selection to the New York State Constitutional Convention in 1967. Their efforts to repeal the so-called Blaine Amendment, the religious liberty guarantee in our State Constitution, was thwarted by the voters after a long and bitter campaign, in which the opposition was. successfully led by PEARL, the Committee for Public Education and Religious Liberty, a coalition of civic, religious and education groups, founded by Leo Pfeffer of AJCongress.

Throughout the last decade most of the pressure for education vouchers came from parochial school groups in the North and White Citizen's Councils in the South. Vouchers or tuition grants were approved by the legislatures of Louisiana, Mississippi, Virginia and Alabama. In each instance they were found by federal courts to be a form of state-supported segregation and therefore unconstitutional.

It is interesting to read the language of the Louisiana tuition statute of 1967, because it has a familiar ring. It calls for the provision of "financial aid scholarships to needy children enrolled in private nonsectarian elementary and secondary schools . . . whose parents choose not to enroll said children in the public education facilities of this state . . . mindful of the increase in juvenile delinquency, school dropouts and juvenile crime rates . . . mindful that the parent, not the State . . . shall be the determining force which shall decide on the type of education ultimately received by the child . . . (but) lack the finances which would enable them to enroll their children in private schools."

Noble, was it not, to give the needy the same choice as the rich, to enable the parent to determine the type of education for his child? And, after all, it was only to protect their children against juvenile delinquency, not because they opposed integration!

It is true that private schools need not retain a youngster who misbehaves. Whatever the initial selection procedures might be, private and religious schools would have no compunction about permanently suspending youngsters who do not meet their standards, either in behavior or achievement. This is common practice and always has been their prerogative. The public school, on the other hand, is bound by due process requirements and constitutional mandates of nondiscrimination in admissions and hiring practices, academic freedom, equality of opportunity, and the prohibitions against engaging in religious or political indoctrination. There is a real danger in exempting school children from such protections of our Federal and State Constitutions and laws.

Apart from the religious schools, the costs of education in private nonsectarian schools far exceed the costs of public. education. The report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education (the Fleischmann Commission) indicated that in the school year 1969-70 the cost of elementary education in these private schools averaged $1768 per child and secondary education, $2234, as compared to total expenditures for public elementary and secondary students of $1255 per pupil. Since the OEO plan forbids a voucher school to charge any tuition above the value of the voucher and the voucher is pegged to the average per capita operating expenditure in public schools, it appears obvious that the nonreligious private schools would be nonparticipants.

The Fleischmann Commission also disposed of the cliche about the value of competition in education, the argument that if public schools must compete with private schools, the quality of education would be higher at all levels. After a two-year study, they found "that by and large, public and nonpublic schools are very similar with respect to methods of teaching and the substance of what is taught. There is no convincing evidence of the superiority of one or the other . . . No studies can be cited to demonstrate the effectiveness of a 'free market' concept between public and nonpublic sectors."

Nor did they find the public school system to be a monolithic institution, "but a pluralistic one, providing diversity of educational programs and approaches within its scope . . . its varied resources are available to all children." The fact is that no two districts are governed alike, funded alike, serve the same children, have the same policies (except in most general terms), have the same staffing arrangements, etc. There is as much diversity in public schools as in private schools, perhaps more.

If religious schools are exempt for constitutional reasons and if nonsectarian private schools are priced too high to qualify for vouchers, then where will the poor Inner City child take his voucher—to Westchester or Great Neck? Would they be under obligation to accept a New York City voucher? Politics and economics would dictate not.

It is probably not impossible to imagine some new schools being formed by special interest groups anxious to feed at the public trough or entrepreneurs anxious to make a fast dollar. The poor would fall prey to their promises of instant success just as they fall prey to trade schools which promise nonexistent jobs after graduation. Their only recourse, then, is the Attorney General's office. It is not an unfamiliar pattern, the poor being victims of consumer frauds more than any other group.

Hucksterism in education may not be employed to any great extent today when the market is limited to high income parents whose choices are likely to be carefully weighed (although a recently filed law suit against a highly touted, expensive school for "gifted children" on Long Island demonstrates that they, too, can be "taken"), but the lure of federal funds will certainly open the market to shady operations which will seek to induce low-income parents to turn over these valuable vouchers. Moreover, parents may well be placed under tremendous pressure by community groups, church groups and politically motivated groups, including those peddling hate, to subsidize their efforts with these funds. Such pressures would place the most vulnerable parents in an intolerable position.

There is no guarantee that any voucher school would be an integrated school, whatever the guidelines might be. The private school is not likely to risk alienating its primary customers by accepting any significant number of poor and nonwhite children. The public schools have attempted various incentives to achieve racial balance, including smaller classes and increased services and staff in MES (More Effective Schools) schools, in rezoned schools, in ESEA programs, in Open Enrollment schools, only to experience within a short period of time a considerable loss of white population to private and parochial schools. To the extent that options for private schools are open to white students without any financial sacrifice on their part, segregation in public and private schools will be accelerated.

The keyword now is accountability. The voucher system assumes that accountability would be achieved on the theory that if the school does not provide the success sought, the parent will withdraw the child and take his voucher elsewhere. But if the school satisfies the middle-class parent and does not really want the low-income minority group child, it will not be concerned with this loss. It would have a good reputation amongst the parents whose children it seeks to enroll and could engage in the lottery procedure with confidence that minority group children would not want to gain entrance since it fails them. We would have not only frozen the child out of integrated schools, but some public schools would become places of last resort for the poorest achievers, the most disadvantaged youngsters, truly the dumping grounds for unwanted children.

Even if the parents opt only for other public schools, problems are bound to arise. Assume that parents in PS 100 decide that they do not like the school and want to enroll their children in PS 300, which has a better reputation. If PS 300 gets too many applicants, does it have the option of the private school to reject those for whom no places exist? Can some public schools limit their enrollment while others have to be overcrowded? Can private schools be required to go on double sessions, as public schools are, when they are overutilized? Or would this only be a burden on some public schools? Since current enrollees and their siblings would get first choice under the plan, will there really be room left for the poor and would a school not be able to reduce its capacity and keep them out?

The OEO Voucher Plan suggests that there be a payment of incentives for integration. What happens if a school has a majority of blacks and is unable to induce white enrollment, would it get less money than an integrated school? Also, what criteria would be established to demonstrate that a school is not discriminating—if it has 1%, 5%, 10% or what percent of black or Puerto Rican low-income children, or are race and income exclusive criteria?

Nor can one ignore the cost factor which would double the present tax support of education. If the voucher system were replicated in New York City where 400,000 children attend nonpublic school and where 60% of the public school enrollment is nonwhite, which would mean a higher value voucher for them, and transportation expenses are added on top of the voucher funds, the additional cost would be well over a half billion dollars without taking into account new capital expenditures.

While OEO would assume the burden on a limited experimental scale, what happens when OEO steps out and legislatures determine the cost is too high, that the budget could not accommodate this added burden? Under government pressure, school districts in New York State have had to consolidate for efficiency and economy. If the vouchers encourage a proliferation of schools, they will lead to greater, not lesser, costs in duplicating services.

There are serious doubts that the regulations proposed for the voucher system by OEO are enforceable and, as Christopher Jencks has pointed out, "an unregulated system . . . would produce even more racial and economic segregation than the existing neighborhood school system . . . and would also widen the expenditure gap between rich and poor children, giving the children of the middle classes an even larger share of the nation's educational resources than they now get, while reducing the relative share going to the children of the poor."

Whatever stringent controls are placed on the participating schools in this experiment would not survive when OEO withdraws and could not be effectively policed or regulated.

In any event, it would appear that the OEO Voucher Plan is already dead. State legislatures and the Congress have been under tremendous pressure from parochial school advocates to approve a tuition grant system without the restrictions of the regulated voucher. Such pressures have also prompted candidates for national office to express publicly support for tax credits, another form of unregulated tuition grants. The plight of the disadvantaged child does not stir political debate and neither the tuition grant nor voucher provide the answer.

Educational problems will not be resolved by competitiveness of schools, but by more funds from the Federal

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government for individualization of instruction, by changing attitudes both in and out of school, by involving parents along with their children in efforts to upgrade educational achievement, raise their aspirations, improve their self-image and self-confidence, by discouraging rather than encouraging the growth of exclusive, selective, private schools and by using the brain power and good will of dedicated educators and social scientists to really attack the problem where the disadvantaged child is and will be for the foreseeable future — in the public schools.

More than that, it requires a reawakening of the American conscience.

Rabbis, Priests and Ministers

Allen S. Maller

Most Jews feel that Protestants are closer to Judaism than Catholics are, and that, therefore, ministers are closer in their beliefs and philosophy to rabbis than priests would be. This is not true. While liberal Protestant sects have abandoned a great deal of traditional Christian belief, they represent only a small percentage of the total Protestant community. Because their ministers are usually the ones who participate in brotherhood events and social action activities, where Jews are likely to meet them, most Jews draw the false conclusion that these liberal ministers are representative of most Protestants. A recent survey of American clergymen (Gallup, March 1971) allows us to make a much more accurate appraisal. Fortunately, the survey differentiates between those under 40, and those over 40. Thus, we can get some idea of further developments.

The clergymen were asked: "Should churches be concerned mainly with the spiritual life of the individual or should they be concerned mainly with problems of society as a whole?" Fifteen percent of the rabbis said "mainly with the spiritual life of the individual," compared to 35% of the priests, and 49% of the ministers. The traditional Protestant stress on individualism and personal sin clearly shows here. Catholics traditionally have been much more involved with the state and with the laws of society. Jews are so highly oriented toward this world and its social problems that there seems to be a slight countertrend among the younger rabbis who alone are more concerned with the spiritual life of the individual than are their elder colleagues.

More explicitly, the survey asks: "In your opinion should churches keep out of political and social matters or should churches express their views on day-to-day social and political questions?" Only 5% of the rabbis and 6% of the priests said "keep out," compared to 21% of the ministers. The tendency for Catholics and Jews to clash over specific issues such as abortion, divorce, and state aid to parochial schools, often obscures the underlying agreement that political activities are a religious obligation. Of course, Scripture and God can be quoted on both sides of most contemporary issues. We shouldn't be surprised to find clergymen differing in their politics. When asked, "What do you think is the most important problem facing this country today?" 21% of rabbis selected the Vietnam War, compared to 11% of ministers and priests. On the other hand, 23% of ministers and 14% of priests picked "indifference to spiritual values," compared to 6% of rabbis.

Very few, if any American clergymen are influenced solely, or even predominantly, by their religious tradition. Their general political opinion is at least equally important in understanding why they take a certain moral position on a complex political issue. The clergymen were asked about their "political positions from the far left to the far right. Considering your own political views, where would you place yourself on this scale?" Thirty percent of the rabbis, 21% of the priests, and 20% of the ministers place themselves on the left. On the other hand, only 5% of the rabbis, compared to 11% of the priests and 14% of the ministers place themselves on the right. The generation gap is particularly interesting on the "left." There is a 12-point gap for ministers (24% for under 40, 12% for 40 plus), which increases to 18 points for rabbis (44% for under 40, 26% for 40 plus), and reaches 27 points for priests (38% for under 40, 11% for 40 plus). These leftwing priests will greatly transform the Catholic church in the next two decades if they remain in the priesthood. However, they are twice as likely as the average priest to have considered leaving religious life. It is quite possible that many, if not most, of them will indeed leave the church.

So far the priests have been closer to the rabbis than the ministers have. This remains true even when we consider religious services. When asked, "Do you think a person can be a good Catholic/Protestant/Jew and not attend church/temple regularly?" 60% of rabbis say "yes," compared to 32% of priests and 20% of ministers. Once again the generation gap is noticeable among

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NAACP 61ST ANNUAL CONVENTION—RESOLUTIONS, JUNE 29–JULY 3, 1970/ CINCINNATI, OHIO

8. VOUCHER SYSTEM

A school voucher system, assisted by Federal and perhaps other public funds, is now under consideration by the U.S. Office of Economic Opportunity. Under this plan, vouchers in the form of financial grants would be made directly to low-income families who could then apply the vouchers to public and private schools of their choice. Despite general assurances that the plan would include "safeguards" to prevent its use to further segregation, we deeply fear that this indeed would be the result. We are opposed to the use of any plan of this type as the result would be to perpetuate segregation in schools.

NAACP 62ND ANNUAL CONVENTION—RESOLUTIONS, JUNE 4–JULY 9, 1971/ MINNEAPOLIS, MINN.

5. THE VOUCHER PLAN

The voucher plan, whereby parents of all income levels may apply federally-subsidized payments in the form of vouchers for the admission of their children to public schools or private schools of their choice, is now being funded on an experimental basis by the U.S. Office of Economic Opportunity. Despite vague assurances that the voucher plans will not be used to further segregation, there is grave reason to fear that greater racial, ethnic, and socio-economic segregation will indeed result, and that it will be a new dead-end for black and poor children.

We, therefore, reaffirm our opposition to the voucher plan and we call upon the National Office and local NAACP branches to take necessary actions opposing the voucher plan.

Senator **DURENBERGER**. Panelists, thank you very much.

Our next panel consists of the Reverend Thomas Gallagher, the Secretary for Education, U.S. Catholic Conference, Washington, D.C.; Mr. William J. Lehrfeld, Washington, D.C. on behalf of the Knights of Columbus, the Catholic Daughters of America, the Daughters of Isabella, the National Council of Catholic Women, the National Catholic Education Association, and Citizens for Educational Freedom; Rabbi Menachem Lubinsky, director, Government and Public Affairs for Agudath Israel of America, in New York, N.Y.; and Sister Renee Oliver, the associate director, Citizens for Educational Freedom, Washington, D.C.

Thank you all. If you don't mind going in the order you were introduced, we will proceed. Your statements will all be made part of the record.

STATEMENT OF REV. THOMAS GALLAGHER, SECRETARY FOR EDUCATION, U.S. CATHOLIC CONFERENCE, WASHINGTON, D.C.

Reverend **GALLAGHER**. Senator Durenberger, I would like to thank you for the opportunity.

I am Father Thomas Gallagher, the secretary of education for the U.S. Catholic Conference, and I am here today representing the Catholic bishops of the United States for the third time in as many years that they have represented their views on this issue.

The Catholic bishops and the Catholic community support the concept of tuition tax credits because they see this legislation as a matter of human rights, human dignity, and a matter of social justice for millions of American parents of school-age children in the United States.

Second, they share with you a responsibility for children in public and private schools. Two-thirds of the Catholic school-age children in the United States who attend school attend public schools, and it would be our contention that support for nonpublic school does not bespeak a policy of diminished support for public schoolchildren. In fact, I guess those of us who claim to be leaders in government and education would do well to perhaps cease fostering such a debate at the grassroots level. I think we make for more division at the local scene over public and private than the people at the local scene would make over it.

I think we should see tuition tax credit legislation as support not so much for nonpublic schoolchildren but, finally, as support for all children and their education in the United States.

Third, because education is the responsibility of the entire community, it will always cost the taxpayer. And we would just like to suggest that without some assistance increasing numbers of private schoolchildren will be forced to leave their schools, and that move from the private sector to the public sector will probably cost the citizenry of this country much more than tuition tax credits ever would.

Fourth, tuition tax credit legislation is good public policy because it strengthens the basic unit of our society, the family. We would contend that God has given the children to the family, and the parents are the ones entrusted with creating a world view and making a world for their children, and they should be empowered to do that to the highest degree possible.

Tuition tax credits would reverse the trend that has made the parent the aid of the educational establishment rather than the establishment the aid to the parent.

I think we also have to admit that it's a hollow promise to tell families, and parents in particular, that they have a God-given right to educate their children and then not empower them, or to tell them that they have a God-given responsibility and mandate to put their children in schools and then not help them sustain that when they want to make the choice that is their God-given right.

I think I can also say that we feel it would be very good public policy to consider the issue of refundability when it comes to tuition tax credit legislation, because if there is any kind of poverty that enslaves, it is the poverty that deprives us of freedom of choice. And anyone who has suffered poverty knows that that is the suffering, that you don't have the freedom to make the choices that everybody else around you has made.

In closing, I would like to say that tuition tax credit legislation transcends the issues of institutions. We are not so much involved in kids and students being born to go to school as for students becoming the best possible persons that they can become in this world and in their lifetime. And we have a responsibility to do all that we can to help them live out that call, live out that development.

The issue of tuition tax credits transcends fiscal considerations, a matter of who gets what; it speaks to the heart of this Nation, the family. It speaks to the future of the Nation, its children. It speaks to the treasure of this country, freedom of choice. And it speaks to the pride of this Nation, educational opportunity for whomever, and whenever and wherever they need it.

I would urge you and all of the members of the committee to make history and encourage your colleagues to enact this legislation.

Senator DURENBERGER. Thank you very much.

Mr. Lehrfeld?

[The Reverend Gallagher's prepared statement follows:]

TESTIMONY OF REV. THOMAS G. GALLAGHER, SECRETARY OF EDUCATION ON BEHALF OF THE U.S. CATHOLIC CONFERENCE

Mr. Chairman, members of the Committee, I am Father Thomas Gallagher, the Secretary of Education for the United States Catholic Conference. This is the third time in as many years that a representative of the U.S. Catholic Bishops has testified before this Senate Committee in support of tuition tax credit legislation. Although it is not my desire to restate the testimony previously given on two separate occasions by Bishop James Lyke, I would like to briefly reaffirm the reasons underlying the Catholic Bishops' support for this legislation. And further, I would like to touch upon the issue of tuition tax credits as good public policy, an approach which I believe has not been adequately emphasized in previous testimony before this Committee.

RATIONALE FOR SUPPORT

Simply stated, the support by the Catholic community for tuition tax credits is predicated on the belief that this is a matter of human rights and social justice for millions of America's school-age children and their parents. The United States Catholic Conference has testifed numerious times on numerous issues facing Congress, and each time for each issue the motivation has been the protection of the dignity of the human being. In this issue, too, the very dignity of the child and his or her parents is at stake. If a child any child, is denied access to the kind of education best suited to his needs, then our public policy is errant in its philosophy and its practice. If a child any child, is restricted in educational opportunity merely due to his or her parents' inability to pay, then government is remiss in fulfilling its duty to uphold the dignity of all citizens by enabling them to reach their fullest potential. As Bishop Lyke has previously stated to this Committee, the dignity of the individual "must be the cornerstone of all public policy in this country."

TUITION TAX CREDITS—GOOD PUBLIC POLICY

Mr. Chairman, this brings me to the second and major thrust of my discussion—the recognition of tuition tax credits as a just and essential public policy, well within the purview of Congress.

I have closely followed this issue over the years, as a teacher, as the superintendent of Catholic schools in the diocese of Rockville Centre, New York, and, more recently, as Secretary of Education at USCC. I am saddened by much of the debate over tuition tax credits—saddened by the frequent and indiscrimiate use of arguments which state that this legislation represents poor public policy because it would contribute to an enterprise which is somehow less than "public" or less than "American." The argument to which I refer implies that any assistance to nonpublic school children is, in effect, a diminishing of support for children in public schools.

I must reiterate that fully two thirds of the Catholic school age children in the United States attend our public schools. Neither the American Catholic bishops nor I would be here supporting this legislation today if we felt that it would in any way hinder support for the public schools of our nation. When public schools began and grew in numbers in the 1800's, most of the nonpublic schools already in existence accepted as full partners this relatively new enterprise called public education. We must continue that partnership through the strengthening of both the public and nonpublic sectors.

This fact—that public support for nonpublic school children does not represent a "tradeoff" with public education—deserves more attention. As Mr. Dennis Doyle, writing a few years ago for the Brookings Institute, has so aptly stated:

"The conventional wisdom in much of the public and private sector holds that a major change in the way we finance education—adding private schools to the public expense ledger—is essentially a zero sum game . . . The zero sum fear is based on a false assumption that the education pie is finite, and that even a small slice for private education will diminish public education."

Mr. Doyle goes on to state, significantly, in my opinion:

". . . rather than viewing private education with suspicion and hostility, supporters of the public school system might gain, both financially and politically, by looking to the private sector for allies in the effort to adopt a strategy of support for education as a whole."

The writer continues:

". . . The strongest evidence comes from Australia, where one third of the students are enrolled in private schools supported by public funds. Every indication suggests that there is now a much more broadly-based coalition of support for education in general and that the levels of support for education in the public sector alone are higher now than they would have been absent general support for education generally, both public and private."

Mr. Chairman, although the author is here talking about support for schools, not necessarily direct assistance to parents as would be provided by tuition tax credits, I think my point has been made. I might add that other evidence exists here in the United States which supports this author's view. The city of New York has a strong nonpublic school community, with over one-fourth of the children attending nonpublic schools. And yet New York city has one of the most outstanding records of support for public education.

The public policy of support for nonpublic school children, therefore, does not bespeak a policy of diminished support for public education. In fact, just the opposite appears to be true.

But what of another aspect of the public policy question, the burden of education on the taxpayer, including many taxpayers who do not themselves have children in school? It costs the taxpayer approximately $2,169 annually to educate a child in the public schools. If the current economic difficulties continue to plague our nation, prolonging high unemployment, particularly in our urban areas and industrial centers, there can be little doubt that more and more children currently attending nonpublic schools will be forced to leave those schools. This will place increasing burdens on the taxpayers, because they will have to pay for the education of those children at a cost much higher than the costs involved in this tuition tax credit legislation. I might add that the existing investment in the education of children in nonpublic schools is enormous, and that tuition tax credits can also be viewed as good public policy because they would encourage and maintain that investment in this important sector of our economy.

Mr. Chairman, Members of the Committee, I am not indulging here in unsubstantiated rhetoric. In 1982-83 Catholic school enrollment declined 2.2 percent or 68,000 students. Although a more careful analysis must be done to determine exact reasons for that decline, it is a matter of fact that most Catholic schools are located in our nation's inner-cities and urban areas. These are the very areas which have been hit by high unemployment, forcing many parents to reconsider even the smallest tuition expense to keep their children in nonpublic schools. If we were to assume, for comparative purposes, that every one of those 68,000 children was now in the public sector, taxpayers would be paying approximately $147,492,000 to educate them. If, on the other hand, we could assume that a $300 tuition tax credit would have helped those parents keep their children in the Catholic schools, the cost would have only been $20,400,000. Although my assumptions carry the example to the extreme, I think the point is clear: Tuition tax credits, particularly in a time of difficult economic sense. A relatively small investment in the youth of our nation through tuition tax credits can save billions of tax dollars later on.

Finally, Mr. Chairman, I would like to make the point that this legislation is good public policy because it has the often overlooked benefit of being family-centered. Apart from the potential to help strengthen public and private schools, and apart from the long term fiscal benefits I have already mentioned, this legislation reaches beyond the sometime muddled debate to a fundamental principle upon which this country was founded and to which Americans have always subscribed.

The family is the most basic element of our society and should be supported through the public policies adopted by our governments. Over the years there have been presidential commissions on the family, state legislatures repeatedly deal with issues involving family rights and obligations, and this Congress is constantly voting on measures affecting family life. Tuition tax credits must also be analyzed as legislation which will strengthen the family in America by giving families, especially middle- and low-income families, more of a voice in the education of their children. It is a hollow promise to tell families they have a constitutional right to educate their child in the school of their choice, if the public policy of the nation does not empower them to exercise that right. If you believe, as I am sure that you do, that parents are the primary educators of their children, then you, as government officials, must be willing to act on measures establishing public policy that helps parents exercise their responsibilities.

In this sense, Mr. Chairman, the issue of tuition tax credits transcends the issues of support for schools and fiscal considerations. We are discussing an issue which will empower the basic unit of our society to make choices in performing its duties and responsibilities. In the long run, this legislation will strengthen families by giving them choices which they may not have now. I argue, Mr. Chairman, Members of the Committee, that this is good public policy, and one which this Congress should not hesitate to act upon.

STATEMENT OF WILLIAM J. LEHRFELD, ESQ., LEHRFELD & HENZKE WASHINGTON, D.C., ON BEHALF OF THE KNIGHTS OF COLUMBUS, THE CATHOLIC DAUGHTERS OF AMERICA, THE DAUGHTERS OF ISABELLA, THE NATIONAL COUNCIL OF CATHOLIC WOMEN, THE NATIONAL CATHOLIC EDUCATION ASSOCIATION, AND CITIZENS FOR EDUCATIONAL FREEDOM

Mr. **Lehrfeld**. Thank you, Senator.

My name is William Lehrfeld. I am tax counsel for the committee for private education and presently its most visible member, the Knights of Columbus.

You have our prepared testimony. I would like to make some observations that are not part of the prepared testimony in response to some of the information is or will be in the record.

First of all, legislation affecting private schools is not new in the Internal Revenue Code. My computer printout from last night shows that there are now in the Internal Revenue Code 22 different provisions which directly affect the school, the school's teachers, the school's pupils, and the school's parents.

They are probably as little known as the ability for schools to draw down tax-free regulated alcohol under IRC 5214, the ability of school employees, for example, to have tax-sheltered annuities under IRC 403(b), or the ability of private schools to offer tax-free to students scholarships so they don't have to pay Federal income tax under IRC 117. There are just a host of Federal tax provisions already in the Code affecting private schools so that a tuition tax credit for parents is not unique.

Senator **Durenberger**. It might be appropriate to make the information behind your printout a part of the record as part of your testimony.

Mr. **Lehrfeld**. I would be happy to.

[The information follows:]

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This written submission is given, pursuant to the request of Senator Durenberger. Its purpose is to list and describe the numerous provisions in the Internal Revenue Code which provide tax benefits respecting private schools, public schools, or both private and public schools. As will be seen, the statutes in question provide diverse kinds of tax benefits; some lower the tax liability of the schools themselves; some give tax benefits to supporters of the school for their payments to or for the school; and some provide financial tax benefits to persons who attend the schools or to their parents or guardians. In order to achieve the results which Congress intends, several different types of tax classifications are necessary, and some of these classifications necessarily distinguish between types of schools, including private schools, religious schools, and public schools.

Each paragraph below will briefly describe the statute in question; who the direct beneficiaries of the relevant provision are; and whether the provision related to private schools, public schools, or other similar classes of schools. Even a brief perusal of these provisions makes apparent that tax benefits for private or other classes of schools is necessary and customary in the Internal Revenue Code.

I

The 22 provisions below each contains a reference to educational organizations described in IRC § 170(b)(1)(A)(ii), which is the most common way in which the Code refers to a school.

Section 44A. Code Sec. 44A has two separate provisions which relate to schools. Sec. 44A(e)(2) provides that, for purposes of the credit against the income tax because of household or home care expenses, if one spouse is a student, a certain amount of income will be "deemed" to have been received by such student. Under Sec. 44A(f)(7) and (8), a qualifying student could attend either a public or private school. The direct beneficiaries under this section would be the spouse(s) receiving the increased credit by virtue of the "deemed" income raising the "earned income limitation" on the credit. This credit would apply to those who are students at either private or public schools, universities, etc.

In addition, Sec. 44A(c)(2)(C), while not referring to educational institutions under either Sec. 501(c)(3) or Sec. 170(b)(1)(A)(ii), allows as one of the items for which the credit may be used those expenses associated with the use of day care centers. Here, the benefit would directly benefit the taxpayer seeking the use of the credit. The existence of the credit would also encourage the use of, and thus benefit, day care centers, most of which are not run by a governmental unit.

Section 44F allows corporations a credit against income tax for qualified research expenses paid or incurred by a corporation to private or public colleges or universities (i.e., "institutions of higher education", per Sec. 44F(e)(2)(A)). The benefits under this Code section would directly go to the corporations, by way of the credit. Private and public colleges and universities would indirectly benefit by the indirect subsidy of their research expenditures.

Section 103 provides two separate exceptions from inclusions in gross income for interest paid on bonds. The first, found at Sec. 103(c)(3), provides that interest paid on arbitrage bonds used to house personnel of Sec. 170(b)(1)(A)(ii) public and private educational organizations will not be included in gross income. However, these institutions are limited to those granting baccalaureate or higher degrees. The benefits of this provision would run directly to those holding the bonds on which interest was paid. Qualifying institutions issuing the bonds would indirectly benefit from being able to finance operations with tax-exempt bonds.

This section also provides a similar interest exclusion for industrial development bonds issued, for example, by public schools (Sec. 103(b)(3)(A)) or for private schools exempt under Sec. 501(c)(3)(Sec. 103(b)(3)(B)). Again, this provision would benefit both those holding the bonds and those schools for whom they were issued.

Section 117 provides that individuals receiving scholarships from Sec. 170(b)(1)(A)(ii) educational organizations (i.e., public or private schools) can exclude such amounts from gross income, subject to certain limitations on both the grantor and the recipient. The primary beneficiary under this provision is the recipient student/individual, whether he studies or researches at a public or private school. The statute indirectly benefits schools by providing a de facto tuition subsidy.

Section 151, which provides for certain deductions when computing taxable income, allows for a dependency deduction for a taxpayer's child who is a student (Sec. 151(a)(1)(B)(ii)). A student is one who, for 5 months of the previous year, has attended either a public or private school, within the definition of Sec. 170(b)(1)(A)(ii)(Sec. 151(e)(4)). The benefits of this provision accrue to the taxpayer-parent who claims the dependency deduction.

Section 152 defines "dependents" for income tax purposes. For the purposes of determining whether such student receives more than half of his support from the taxpayer claiming him as a dependent, scholarships received from Sec. 170(b)(1)(A)(ii) private and public educational organizations will not be taken into account in making this determination (Sec. 152(d)). The primary beneficiary of this provision is the taxpayer seeking to claim the dependency deduction.

Section 163 provides generally for the deduction of separately stated interest. Sec. 163(b)(1) allows for the deduction of non-separately stated interest, if incurred to purchase "educational services" from a Sec. 170(b)(1)(A)(ii) public or private educational organization. The primary benefit of this provision would accrue to the taxpayer who pays the interest and seeks the deduction.

Section 170 sets forth the rules for deductions arising as a result of charitable contributions and gifts to qualifying recipients. Such qualifying recipients include, under § 170(b)(1)(A)(ii), "educational organizations", both public and private, with regular faculty, students, curriculum and educational activity. The beneficiaries of this provision include both the donors, by way of the deductions from income allowed for a percentage of these contributions, and the recipients, because of the encouragement this Section provides donors to make such contributions.

Section 403 deals with the taxation of funds in employee annuities; subsection (b) treats annuities purchased by Sec. 501(c)(3) organizations, *viz*., nonprofit private schools and educational organizations and public schools, also described as § 170(b)(1)(A)(ii) educational organizations. Amounts paid for annuity contracts purchased by such schools for their employees may be excluded from the employee's income if certain requirements are met. This provision benefits the employees of public and private nonprofit schools by lowering their gross income subject to taxation. It indirectly benefits the schools themselves by lowering their pension costs.

Section 415 in subsection (c)(4) provides for an irrevocable election by an employee of a Sec. 170(b)(1)(A)(ii) public or private educational organization with respect to the gross income exclusion provided by Section 403, above. This election, though as broad as the provision under Sec. 403 with respect to educational organizations, is more restricted with regard to other Sec. 501(c)(3) organizations. Similar to Sec. 403, the beneficiaries of this provision would be the electing employees of the educational organizations.

Section 501(c)(3) provides for the exemption from taxes for nonprofit, private educational organizations organized and operated exclusively for educational purposes. While educational organizations under Sec. 170(b)(1)(A)(ii) (charitable contributions) refers to both public and private organizations, Sec. 501(c)(3) educational organizations only encompass private (nongovernmental) schools. Public schools, being governmental units, are exempt from income taxes under Section 115. The benefits of Sec. 501(c)(3) tax-exempt status inure to the private school holding such tax-exempt status.

Section 508 requires that new organizations must provide notification that they are applying for Sec. 501(c)(3) exempt status. Subsection (c)(2), however, provides that the

Secretary may, by regulation, exempt educational organizations described in Sec. 170(b)(1)(A)(ii). No real benefit accrues under this except for a lessening of a minor administrative burden. Since public schools are not required to file an exemption application, no notice would be required of them in any event.

Section 512, titled "Unrelated Business Taxable Income", has three separate parts which make reference to educational organizations.

1. In general, this tax, by reference to Sec. 511(a)(2), applies to all nonprofit private schools, but only to state (e.g., public) colleges and universities. Thus, while only the Treasury benefits by the tax, primary and secondary public schools benefit by not being subject to this tax.

2. A special rule, applicable to the radio station of private religious colleges excludes unrelated business income from the tax under very limited circumstances. Sec. 512(b)(15). Since the educational organization must be associated with a religious group, by definition, the exception would not apply to public (state) educational organizations. Only private religiously-affiliated educational organizations meeting the specific requirements would benefit from this exemption from the unrelated business income tax.

3. Section 512(b)(8) provides a special exemption from the unrelated business income tax for educational organizations performing research, but only for colleges and

universities. Thus, only public and private colleges and universities would benefit, to the exclusion of primary, secondary, and certain other private schools. (The tax does not apply to public primary and secondary schools).

Section 1303(c)(2)(A) provides an exception from the general rule that income-averaging is only available to those who furnish at least one-half of their own support. That subsection provides that an individual may still income average even if he has furnished less than one-half of his support if he meets certain age requirements and was not a full-time student at an educational organization described in Sec. 170(b)(1)(A)(ii), e.g., public or private schools. This provision is a detriment to students and former students of public or private schools who seek to income average to reduce their income taxes.

Section 2503(e)(2)(A) excludes from the definition of "taxable gifts" any amounts paid on behalf of an individual for tuition at a $ 170(b)(1)(A)(ii) public or private educational organization. The benefits of this provision would run to the person who would otherwise be subject to the gift taxes, normally, the donor. Indirectly, the provision encourages tuition subsidies to students.

Section 4041(g) provides exemptions from miscellaneous excise taxes (e.g., special fuels, diesel fuels, etc.). The exemption is available both to public (state) educational organizations ((g)(2)) and private nonprofit educational organizations (Sec. 4221(a)(5) and (d)(5)). The benefits of this exemption would run to both public schools and nonprofit educational organizations as defined in § 170(b)(1)(A)(ii), in the form of lower prices paid.

Section 4253 provides exemptions from the tax imposed by Sec. 4251 on amounts paid for communications services. Sec. 4253(i) allows an exemption for services or facilities furnished to states, political subdivisions, etc., which would include public (state) schools and universities. Sec. 4253(j) provides an exemption for nonprofit, tax-exempt educational organizations as defined in Sec. 170(b)(1)(A)(ii) and includes schools operated by organizations exempt under Sec. 501(c)(3). The benefits of this exemption would run to both private and public schools in the form of lower prices.

Section 4941(d)(2)(G)(ii) exempts from the tax imposed on self-dealing between a disqualified person and a private foundation the issuing of scholarships and fellowship grants to government officials. These scholarships and grants must meet the provisions of Sec. 117(a), above, and must be used at either public or private educational organizations described in Sec. 170(b)(1)(A)(ii). The benefit here would accrue to the disqualified person who would otherwise be subject to the self-dealing tax. This provision would benefit private operating foundations only, since there is no self-dealing tax on other organizations.

Section 4945(g)(1) exempts from the tax imposed on the taxable expenditures of private foundations individual grants (scholarships or fellowships) awarded on an objective and nondiscriminating basis which are subject to Sec. 117(a), above, and are used for studies at an educational organization described in Sec. 170(b)(1)(A)(ii). This exemption would directly benefit the private foundation as a tax savings, and would less directly benefit the recipient of the grant by encouraging private foundations to make such grants. The recipient could attend either public or private educational organizations.

Section 5214 provides exemptions from the tax imposed on distilled, bonded spirits. Sec. 5214(a)(2) exempts all public schools, as political subdivisions, when the spirits are used for nonbeverage purposes. Further, Sec. 5214(a)(3)(A) exempts from the tax spirits used for nonbeverage purposes, and not for resale or use in manufacturing any product for sale, and which are used by nonprofit, exempt private educational organizations described in Sec. 170(b)(1)(A)(ii) and any "scientific university or college of learning". The benefits of this tax exemption would apply to: (1) all public schools using the spirits for nonbeverage purposes; (2) all public scientific universities using the spirits for nonbeverage, nonresale, etc. purposes, and; (3) all nonprofit private schools using the spirits for nonbeverage, nonresale, etc. uses.

Section 6033(a)(2)(C)(ii) provides an exemption from filing exempt organization returns to educational organizations described in Sec. 170(b)(1)(A)(ii). This provision would only benefit private, versus public (state) schools, because public (state) schools are not considered to fall under Sec. 501(a) and, thus, are not required to file the returns in any event.

II

Numerous other provisions in the Federal Tax Code directly or indirectly benefit certain types of schools, even though the term "educational organization" or "school" is not specifically mentioned. A few of these provisions are as follows:

1. Private religious schools, but not private secular schools, are treated as "integrated auxiliaries" of a church and are not required to file annual income tax returns. Treasury Regulations on Income Tax, Section 1.6033-2(g)(5)(iv). Of course public schools, which are treated as an integral part of a state, do not have to file federal income tax returns.

2. Under the current Federal Insurance Contributions Act (FICA), and the Act as it will take affect next year, ordained ministers and members of religious orders are exempt from FICA tax respecting their earnings while teaching in religious schools. IRC § 3121(b)(8)(A). Beginning in 1984, the FICA tax will have to be paid respecting secular teachers in all private schools and in all public schools. The exemption

for ministers and members of religious orders obviously benefits religious schools.

3. Members of religious orders who have taken a vow of poverty are also exempt from the self-employment tax, IRC § 1402(c). Ministers and members of religious orders are also exempt from the self-employment tax if they file appropriate statements stating their objection on religious grounds to any social insurance system. § 1402(e)(1) Secular teachers in private and public schools are not subject to self-employment taxes, but are generally subject to FICA taxes beginning in 1984. This exemption primarily benefits religious schools.

4. The Federal Unemployment Tax Act applies to all private schools, except for certain church-controlled private schools. See St. Martin Lutheran Church v. South Dakota, 451 U.S. 772. Employees of public schools are covered by a somewhat different unemployment compensation system. The exemption for certain religious schools benefits private schools which are an integral part of a church.

5. From 1943 to 1958, only teachers in tax-exempt private schools were allowed to have Section 403(b) annuity pension benefits. Revenue Act of 1942, c. 619, 56 Stat. 798, § 152(c); Act of October 4, 1961 P.L. 87-370, 75 Stat. 796, § 3(a). Under current law, teachers in both public and private schools are allowed the income exclusions provided by 403(b). This provision benefits the teachers, and indirectly benefits the schools by lowering their pension costs.

Mr. **Lehrfeld**. Second, we ought to focus on some of the reasons which cause the Congress to enact tax legislation—equity being one of them, and evidence of that in the Code is income splitting, or alimony deductions and includability.

Congress also enhances an activity sometimes, by passing tax legislation—for example, interest deductions on mortgage or nonbusiness debits; and for egalitarian reasons such as—the political contributions credit, or the dependent care credits. The knowledge that a person's capacity to produce income is impaired convinces Congress to give him a medical expense deduction or you give him a casualty loss deduction. And finally, Congress enacts tax laws to provide relief of the burdens of Government by shifting the burden. You enhance the ability of Government to function by shifting part of that through the charitable contribution so donees may do part of Government's chores.

We are trying to indicate by some of this that there are no true direct financial incentives provided by this bill to the schools themselves which in fact encourages a shift from public schools to private schools. You are overcoming a financial impediment built into the Internal Revenue Code for encouraging private school usage, and the meager tax recognition that is offered here merely lessens the personal sacrifice of individuals who are otherwise committed to private schools, whether or not they are sectarian or nonsectarian.

Thank you.

Senator **Durenberger**. Thank you very much.

[Mr. Lehrfeld's prepared statement follows:]

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WILLIAM J. LEHRFELD
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STATEMENT OF THE COMMITTEE FOR PRIVATE EDUCATION NEW HAVEN, CONNECTICUT BEFORE THE SENATE FINANCE COMMITTEE, ON THE SUBJECT OF TUITION TAX CREDITS

APRIL 28, 1983

MR. CHAIRMAN, MEMBERS OF THE SENATE FINANCE COMMITTEE. MY NAME IS WILLIAM J. LEHRFELD,[1] ONE OF THE TAX COUNSEL FOR THE COMMITTEE FOR PRIVATE EDUCATION, NEW HAVEN, CONNECTICUT.

THIS ORGANIZATION IS COMPOSED OF SEVERAL CONSTITUENT GROUPS REPRESENTING A TOTAL OF 15.5 MILLION PARENTS, STUDENTS, AND TEACHERS NATIONWIDE. AMONG ITS MEMBERS ARE THE KNIGHTS OF COLUMBUS (MEMBERSHIP 1.37 MILLION); THE CATHOLIC DAUGHTERS OF AMERICA (MEMBERSHIP 170,000); THE DAUGHTERS OF ISABELLA (MEMBERSHIP 130,000); THE NATIONAL COUNCIL OF CATHOLIC WOMEN (10 MILLION AFFILIATE MEMBERS); THE NATIONAL CATHOLIC EDUCATION ASSOCIATION (200,000 CATHOLIC SCHOOL TEACHERS AND ADMINISTRATORS, AND 3.5 MILLION STUDENTS); AND CITIZENS FOR EDUCATIONAL FREEDOM, A NONSECTARIAN ORGANIZATION WITH BRANCHES THROUGHOUT THE UNITED STATES. THE COMMITTEE HAS BEEN FOUNDED FOR THE EXPRESS PURPOSE OF SUPPORTING THIS ADMINISTRATION'S TUITION TAX PROPOSALS.

LAST YEAR, A STATEMENT ON BEHALF OF THE COMMITTEE FOR PRIVATE EDUCATION WAS PRESENTED BEFORE THE FINANCE COMMITTEE

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[1] PRINCIPAL, LEHRFELD & HENZKE, P.C., WASHINGTON, D.C.

ON JUNE 16, 1982, IN SUPPORT OF THE EDUCATIONAL OPPORTUNITY AND AND EQUITY ACT OF 1982, SENATE BILL 2673. ARGUMENTS IN FAVOR OF THE CONSTITUTIONALITY OF THAT BILL WERE PRESENTED, AND THE DISCUSSION THERE IS EQUALLY APPLICABLE TO CURRENT S. 528. I WILL NOT REPEAT THAT DISCUSSION, BUT RATHER APPEND THE STATEMENT TO THE END OF MY STATEMENT HERE.

TODAY I WOULD LIKE TO FOCUS MY ATTENTION ON TWO POINTS WHICH WE BELIEVE ARE PARTICULARLY PERTINENT TO THE DELIBERATIONS OF THIS COMMITTEE, WITH ITS SPECIAL EXPERTISE IN FEDERAL TAX AND FISCAL MATTERS. I MIGHT ADD THAT THESE POINTS ARE ALSO WITHIN THE SPECIAL EXPERTISE OF OUR FIRM, WHOSE TWO PRINCIPALS HAVE OVER 30 YEARS OF SPECIALIZATION AND EXPERIENCE WITH THE PECULIAR TAX PROBLEMS OF NONPROFIT RELIGIOUS AND EDUCATIONAL ORGANIZATIONS.

I

OVER THE PAST 15 YEARS, THE CONGRESS, GUIDED IN LARGE PART BY THIS COMMITTEE, HAS STEADILY INCREASED THE FEDERAL TAX BURDEN OF PRIVATE NONPROFIT SCHOOLS, WHICH OF COURSE DIRECTLY INCREASES THE BURDEN ON PARENTS WHO ARE THE PRINCIPAL FINANCIAL SUPPORTERS OF THESE SCHOOLS. THE UNINITIATED OBSERVER MIGHT BE SURPRISED TO HEAR THIS FACT, BECAUSE MOST PEOPLE PROBABLY BELIEVE THAT CHURCHES AND NONPROFIT PRIVATE SCHOOLS PAY NO FEDERAL TAXES. WHILE THAT WAS ONCE THE CASE, IT IS NO LONGER SO.

BY FAR THE MOST SUBSTANTIAL FEDERAL TAX BURDEN IMPOSED ON CHURCHES AND PRIVATE SCHOOLS IS CONTAINED IN THE

SOCIAL SECURITY AMENDMENTS OF 1983, SIGNED LAST WEEK BY PRESIDENT REAGAN. BEGINNING JANUARY 1, 1984, THIS STATUTE WILL IMPOSE A COMBINED 14 PERCENT TAX BURDEN ON THE WAGES OF ALL EMPLOYEES OF CHURCHES, CHURCH SCHOOLS, AND OTHER PRIVATE NONPROFIT SCHOOLS. OUR FIRM HAS MANY SUCH SCHOOLS AS CLIENTS, AND MANY OF THEM ARE IN DESPERATE STRAITS TRYING TO FIND FUNDS TO PAY THIS SUDDEN, UNEXPECTED FINANCIAL BURDEN.

A FEW STATISTICS WILL REVEAL THE ENORMITY OF THE NEW FINANCIAL BURDEN IMPOSED UPON PRIVATE SCHOOLS BY THIS STATUTE. ASSUMING AVERAGE ANNUAL WAGES OF $10,000-$15,000 PER FULL-TIME TEACHER, AND APPROXIMATELY 20 STUDENTS PER TEACHER, NEXT YEAR'S INCREASE IN SOCIAL SECURITY TAXES WILL IMPOSE AN ADDITIONAL FINANCIAL BURDEN OF $70-$105 PER PRIVATE SCHOOL PUPIL FOR FICA TAXES ON TEACHER SALARIES ALONE.2/ FICA TAXES ON WAGES OF OTHER EMPLOYEES WILL MAKE THIS BURDEN EVEN GREATER.

BUT THIS IS NOT THE ONLY INCREASE IN THE FEDERAL TAX BURDEN RECENTLY IMPOSED UPON PRIVATE SCHOOLS BY THE FEDERAL TAX CODE. IN 1976, THE FEDERAL UNEMPLOYMENT TAX ACT WAS AMENDED TO REQUIRE TAXATION FOR THE FIRST TIME OF NON-PROFIT

2/PRECISE FIGURES ON AVERAGE WAGES OF PRIVATE SCHOOL TEACHERS ARE NOT AVAILABLE. AVERAGE WAGES OF PUBLIC SCHOOL TEACHERS ARE $17,602 IN 1980-81. DIGEST OF EDUCATION STATISTICS 1982, TABLE 49 (NATIONAL CENTER FOR EDUCATION STATISTICS). WE ARE ALSO UNAWARE OF ANY STATISTICS ON THE PERCENTAGE OF PRIVATE SCHOOLS WHICH PREVIOUSLY ELECTED TO PARTICIPATE IN SOCIAL SECURITY. OUR FIRM'S EXPERIENCE IS THAT THE SCHOOLS WITH THE MOST PRECARIOUS FINANCIAL BASE HAVE NOT PARTICIPATED.

PRIVATE SCHOOLS, EXCEPT FOR SCHOOLS OF CERTAIN CHURCH-CONTROLLED PRIVATE SCHOOLS.[3] IN 1983, THIS TAX IS EQUIVALENT TO ABOUT 3 PERCENT OF THE FIRST $7,000 OF AN EMPLOYEE'S WAGES, OR A MAXIMUM OF ABOUT $200 PER EMPLOYEE PER YEAR.

FINALLY, IN 1969 CONGRESS EXTENDED THE UNRELATED BUSINESS TAX (I.R.C. §§ 511-514) FOR THE FIRST TIME TO CHURCHES AND CHURCH-OWNED SCHOOLS. THE TAX HAD BEEN IMPOSED ON NON-RELIGIOUS PRIVATE SCHOOLS IN 1951. NO STATISTICS APPEAR TO BE AVAILABLE SHOWING THE AMOUNT OF TAXES COLLECTED FROM SUCH PRIVATE SCHOOLS. HOWEVER, THE MAIN IMPACT OF THE TAX IS NOT IN THE TOTAL AMOUNTS COLLECTED, BUT ITS PARTICULARIZED BURDEN ON THOSE SCHOOLS WHICH TRADITIONALLY RELIED ON A CONTROLLED BUSINESS TO SUPPLEMENT REVENUES.[4]

OF COURSE, SOME -- BUT NOT ALL -- OF THESE TAXES WERE ALSO IMPOSED UPON PUBLIC SCHOOLS. BUT SUCH TAXES, LIKE OTHER INCREASES IN COSTS, ARE BORNE BY THE CITIZENRY AT LARGE -- INCLUDING PARENTS OF PRIVATE SCHOOL PARENTS. BY CONTRAST, TAXES ON PRIVATE SCHOOLS ARE BORNE ALMOST EXCLUSIVELY BY PARENTS OF PRIVATE SCHOOL PUPILS.

THESE INCREASES IN THE FEDERAL TAX BURDENS OF PRIVATE SCHOOLS -- COMBINED WITH THE EXTRAORDINARY COSTS INCREASES IN RECENT YEARS FOR FUEL, INTEREST, MEDICAL INSURANCE AND THE LIKE -- HAVE DRIVEN MANY SCHOOLS TO THE BRICK OF FINANCIAL

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[3] SEE *ST. MARTIN LUTHERAN CHURCH* V. *SOUTH DAKOTA*, 451 U.S. 772.

[4] "I.R.C." AND "CODE" REFER TO THE INTERNAL REVENUE CODE OF 1954.

COLLAPSE, OR HAVE REQUIRED THEM TO CLOSE THEIR DOORS. THE POINT HAS BEEN REACHED WHEN CONGRESS MUST GIVE TAX RELIEF FOR PRIVATE SCHOOLS TUITION, SO THAT STUDENTS ARE NOT DRIVEN FROM THESE SCHOOLS INTO THE PUBLIC SCHOOLS. APART FROM THE DELETERIOUS EFFECTS ON INDIVIDUAL FREEDOM INVOLVED IN SUCH A FORCED DEPARTURE FROM PRIVATE SCHOOLS, ANY SUCH SHIFT OF STUDENTS WILL RESULT IN AN INCREASE IN NEEDED FEDERAL, STATE AND LOCAL TAX FUNDS TO PROVIDE PUBLIC SCHOOL EDUCATIONS FOR SUCH NEW STUDENTS.

THE INCREASED COSTS TO GOVERNMENTS OF EDUCATING CHILDREN WHO LEAVE PRIVATE SCHOOLS WOULD BE ENORMOUS. IN 1983, IT IS ESTIMATED THAT THERE ARE ABOUT 5 MILLION STUDENTS IN PRIVATE SCHOOLS IN THE UNITED STATES.[5/] OF THESE, OVER HALF COME FROM FAMILIES WITH LESS THAN $25,000 ANNUAL INCOME.[6/] IF ONLY ONE PERCENT OF PRIVATE SCHOOL PUPILS CHANGED TO PUBLIC SCHOOLS BECAUSE OF INCREASED TUITION COSTS, FEDERAL AID TO PUBLIC SCHOOLS WOULD HAVE TO BE INCREASED BY ABOUT $23 MILLION PER YEAR.[7/] TOTAL SUPPORT BY ALL GOVERNMENTS TO PUBLIC SCHOOLS WOULD HAVE TO INCREASE BY OVER $105 MILLION PER YEAR. OF COURSE, IF STUDENTS LEAVE THE PRIVATE SCHOOLS IN GREATER NUMBERS, THE INCREASE IN GOVERNMENT OUTLAYS FOR PUBLIC SCHOOLS WOULD BE PROPORTIONATELY GREATER.

5/PROJECTION OF EDUCATION STATISTICS TO 1990-91, P.32 (NATIONAL CENTER FOR EDUCATION STATISTICS).

6/SEE HEARINGS BEFORE THE S. FINANCE COMM. ON TUITION TAX CREDIT PROPOSALS, 97TH CONG., 2D SESS. 55.

7/IBID.

AS IS USUALLY THE CASE, MOREOVER, THE EFFECT OF HIGHER PRIVATE TUITION COSTS WILL NOT BE EQUALLY DISTRIBUTED AMONG PRIVATE SCHOOLS OR PUBLIC SCHOOL DISTRICTS. SUCH COSTS HAVE ALREADY HAD A DISPROPORTIONATE EFFECT ON CATHOLIC SCHOOL ENROLLMENT, WHICH HAS A GREATER PRESENCE AMONG THE POOR OF THE INNER CITIES. LAST YEAR CATHOLIC SCHOOL ENROLLMENT DROPPED 68,000, OR 2.3 PERCENT OF TOTAL ENROLLMENT, AND 62 FEWER SCHOOLS REMAINED IN OPERATION.[8/] THE DEPARTURE OF THESE CATHOLIC SCHOOL STUDENTS IS PARTICULARLY DISRUPTIVE FOR THE PUBLIC SCHOOLS, BECAUSE THEY TYPICALLY OCCUR IN LOW-INCOME INNER CITY AREAS OF THE NORTHEAST, WHOSE PUBLIC SCHOOL FINANCING HAS BEEN ERODED BY THE RECESSION AND DEINDUSTRIALIZATION.

IN VIEW OF THE EXTRAORDINARY INCREASES IN FEDERAL TAX BURDENS ALREADY IMPOSED ON PRIVATE SCHOOLS, AND THE SUBSIDY TO THE COMMONWEAL INHERENTLY PROVIDED BY SUCH SCHOOLS, SOME SORT OF FEDERAL TAX RELIEF IS APPROPRIATE. THE TUITION TAX CREDIT IS PARTICULARLY SUITED TO THIS PURPOSE, BECAUSE IT FOCUSES TAX RELIEF ON THE LOWER-INCOME PARENTS WHO ARE MOST LIKELY TO SWITCH TO THE PUBLIC SCHOOLS IF PRIVATE SCHOOL TUITIONS INCREASE.

FROM THE STANDPOINT OF TAX EQUITY, SOME SORT OF TUITION TAX CREDIT IS ALSO JUSTIFIED. IN 1965, MOST PRIVATE SCHOOLS WERE FINANCED BY GIFTS TO THE SCHOOL ITSELF OR THE SPONSORING

[8/] UNITED STATES CATHOLIC ELEMENTARY AND SECONDARY SCHOOLS 1982-1983, P.7 (NATIONAL CATHOLIC EDUCATION ASS'N).

CHURCH.[9] AS A RESULT, LITTLE SCHOOL SUPPORT WAS SUBJECT TO FEDERAL OR STATE INCOME TAXES. TODAY, TUITION REPRESENTS A MUCH LARGER PORTION OF PRIVATE SCHOOL SUPPORT. WITH THE MEDIAN TUITION CURRENTLY AT $360 FOR PRIVATE ELEMENTARY SCHOOLS AND $900 FOR PRIVATE SECONDARY SCHOOLS,[10] THE FEDERAL GOVERNMENT IS OBVIOUSLY COLLECTING SUBSTANTIAL INCOME TAXES ON FUNDS USED TO PAY PRIVATE SCHOOL TUITION. BY CONTRAST, ALL OF THE STATE AND LOCAL TAXES PAID TO FUND PUBLIC SCHOOL ARE DEDUCTIBLE. IN ADDITION, STATE AND LOCAL GOVERNMENTS CAN AVAIL THEMSELVES OF CAPITAL AT LOW INTEREST RATES, SUBSIDIZED BY THE FEDERAL EXEMPTION OF INTEREST ON STATE AND LOCAL BONDS. BY CONTRAST PRIVATE SCHOOLS MUST NORMALLY BORROW FUNDS AT PREVAILING UNSUBSIDIZED INTEREST RATES. WITH THE ENORMOUS INCREASES IN PREVAILING INTEREST RATES IN THE PAST FEW YEARS. THIS INEQUITY HAS INCREASED DRAMATICALLY. THE ADMINISTRATION'S TAX BILL WOULD HELP REDRESS THESE FUNDAMENTAL TAX INEQUITIES.

II

AS THE ABOVE DISCUSSION SUGGESTS, FEDERAL TAXES AND TAX RELIEF FOR PRIVATE SCHOOLS ARE FIRMLY ROOTED IN THE HISTORY AND STRUCTURE OF THE FEDERAL TAX CODE. FEDERAL TAX PROVISIONS IMPOSING TAXES, ADJUSTING TAX BURDENS, AND PROVIDING

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[9] STATEMENT OF DR. THOMAS VITULLO-MARTIN, HEARINGS BEFORE THE SUBCOMM. ON TAXATION AND DEBT MANAGEMENT, S. COMM. ON FINANCE, 97TH CONG., 1ST SESS. (PT. 2), 87, 97.

[10] STATEMENT OF SECRETARY OF EDUCATION J.H. BELL, ID. AT 9.

CREDITS, DEDUCTIONS OR EXEMPTIONS WITH RESPECT TO PRIVATE SCHOOLS AND THEIR SUPPORTERS ARE INHERENTLY NECESSARY IN SUCH A COMPLEX CODE. SUCH PROVISIONS HAVE BEEN ROUTINELY ENACTED AND ADMINISTERED IN PAST YEARS, WITH RELATIVELY LITTLE ADMINISTRATIVE OR JUDICIAL PROBLEMS. THERE IS NO REASON TO CONCLUDE THAT THE SUPREME COURT WILL TAKE THE TOTALLY UNPRECEDENTED STEP OF HOLDING A TUITION TAX CREDIT TO BE AN ESTABLISHMENT OF RELIGION.

A SUMMARY OF THE PRINCIPAL FEDERAL TAX STATUTES RELATING TO PRIVATE OR PUBLIC SCHOOLS MAY BE HELPFUL IN UNDERSTANDING THEIR HISTORY AND PERVASIVENESS. WE SUBMIT THAT THIS ANALYSIS WILL SHOW THE ADMINISTRATION'S TUITION TAX CREDIT BILL IS ROUTINE IN CHARACTER AND FULLY PRECEDENTED.

THE EXEMPTION FOR NONPROFIT RELIGIOUS OR EDUCATIONAL ORGANIZATIONS -- PRIVATE SCHOOLS -- GOES ALL THE WAY BACK TO THE FIRST INCOME TAX STATUTE, WHICH WAS ENACTED IN 1862, DURING THE CIVIL WAR. ACT OF JULY 1, 1862, CH. 119, § 89-93, 12 STAT. 432, 473. THIS PROVISION HAS BEEN CARRIED DOWN THROUGH THE NUMEROUS INCOME TAX STATUTES AND NOW APPEARS AS CODE SECTION 501(C)(3). GIFTS TO SUCH RELIGIOUS OR EDUCATIONAL ORGANIZATIONS WERE EXEMPTED FROM TAX AS EARLY AS THE SPANISH-AMERICAN WAR, IN THE WAR REVENUE ACT OF 1898, CH. 448, § 29, 30 STAT. 448, WHICH WAS THE PREDECESSOR OF THE TAX DEDUCTIONS FOR RELIGIOUS OR EDUCATIONAL ORGANIZATIONS NOW CONTAINED IN (INTER ALIA) CODE SECTIONS 170(C)(2)(INDIVIDUAL AND CORPORATE INCOME TAX DEDUCTIONS), 642(C)(DEDUCTIONS BY TRUSTS); 2055(A)(2)

(DEDUCTIONS BY ESTATES); 2522(A) AND (B)(GIFT TAX DEDUCTIONS), AND 4942(G)(1)(A) AND 4945(D)(4) (GRANTS BY PRIVATE FOUNDATIONS).

IN WALZ V. TAX COMMISSION, 397 U.S. 664, 669 (1970), THE SUPREME COURT RELIED ON THESE AND OTHER FEDERAL TAX EXEMPTION STATUTES, HOLDING THAT THE NEW YORK REAL ESTATE TAX EXEMPTION STATUTE WAS CONSTITUTIONAL BECAUSE IT WAS SIMILAR TO THE FEDERAL STATUTES AND WAS NOT "INTENDED TO ESTABLISH OR INTERFERE WITH RELIGIOUS BELIEFS AND PRACTICES OR HAVE THE EFFECT OF DOING SO."

OVER THE YEARS, THE PURPOSE UNDERLYING THESE BASIC FEDERAL PROVISIONS HAS BEEN INCORPORATED IN A LARGE VARIETY OF TAX STATUTES WHICH RELATE TO THE TAX BENEFITS AND BURDENS OF SCHOOLS, THEIR SUPPORTERS AND THEIR STUDENTS. SOME OF THESE PROVISIONS APPLY TO ALL SCHOOLS, SOME TO NONPROFIT PRIVATE SCHOOLS ONLY, AND OTHERS SOLELY TO RELIGIOUS SCHOOLS. THESE PROVISIONS HAVE, FOR THE MOST PART, BEEN ROUTINELY ENACTED BY THE CONGRESS, INTERPRETED BY THE COURTS, AND ADMINISTERED BY THE TREASURY DEPARTMENT. TO THE BEST OF OUR KNOWLEDGE, NO FEDERAL APPELLATE COURT HAS EVER HELD ANY OF THESE STATUTES UNCONSTITUTIONAL. INDEED, IT IS AN ACCEPTED PROPOSITION AMONG CONGRESS, THE TREASURY DEPARTMENT, COURTS AND TAX PRACTITIONERS THAT FEDERAL TAX LEGISLATION MUST DEAL WITH THE BURDENS AND BENEFITS APPLICABLE TO ALL CLASSES OF SCHOOLS, AND TO PARTICULAR SUBCLASSES OF SCHOOLS.

FOR EXAMPLE, CODE SECTION 151(E)(4) ALLOWS A SPECIAL DEPENDENCY DEDUCTION FOR NONDEPENDENT CHILDREN, IF THE CHILD

ATTENDS A PRIVATE OR STATE SCHOOL. CODE SECTION 117(A)(1) ALLOWS A STUDENT TO EXCLUDE FROM INCOME SCHOLARSHIPS AWARDED BY PRIVATE OR STATE SCHOOLS. SECTION 44A ALLOWS A TAX CREDIT FOR DAY CARE PROVIDED BY A KINDERGARTEN OR NURSERY SCHOOL, TO ENABLE THE PARENT TO WORK. (OF COURSE, MOST OF THE LATTER SCHOOLS ARE PRIVATE RATHER THAN PUBLIC.)

NOT ALL PROVISIONS OF THE FEDERAL TAX CODE TREAT PRIVATE AND STATE SCHOOLS ALIKE, HOWEVER. FOR EXAMPLE, CODE SECTION 511 IMPOSES THE UNRELATED BUSINESS TAX ON ALL PRIVATE NONPROFIT SCHOOLS, AND ON PRIVATE OR PUBLIC COLLEGES AND UNIVERSITIES, BUT NOT ON PUBLIC ELEMENTARY AND SECONDARY SCHOOLS. TAX EXEMPT PRIVATE NONPROFIT RELIGIOUS AND SECULAR SCHOOLS, UNLIKE MOST OTHER TAX EXEMPT ORGANIZATIONS, ARE EXCUSED FROM FILING AN APPLICATION FOR A RULING AND FROM FILING YEARLY TAX RETURNS. (I.R.C. § 508(C); § 6033(A)(2). OF COURSE, THE IRS RULING PROVISIONS DO NOT APPLY AT ALL TO PUBLIC SCHOOLS. SECTIONS 4041(G)(4), 4221(D)(5) AND 4253(J) PROVIDED EXEMPTIONS TO PRIVATE NONPROFIT SCHOOLS, FROM FEDERAL EXCISE TAXES ON AUTOMOBILES, BUSES, AUTO PARTS, TIRES AND TUBES, CERTAIN SPORTS EQUIPMENT AND FIREARMS, DIESEL FUEL AND SPECIAL MOTOR OILS AND TELEPHONE SERVICE. AND FROM 1943 TO 1958, ONLY TEACHERS IN TAX-EXEMPT PRIVATE SCHOOLS WERE ALLOWED TO HAVE SECTION 403(B) ANNUITY PENSION BENEFITS. (REVENUE ACT OF 1942, C.619, 56 STAT. 798, § 162(C); ACT OF OCT. 4, 1961, P.C. 87-370, 75 STAT. 796, § 3(A).

CERTAIN OTHER PROVISIONS PROVIDE BENEFITS TO PUBLIC AND TAX-EXEMPT COLLEGES AND UNIVERSITIES, BUT NOT TO ANY

ELEMENTARY OR SECONDARY SCHOOLS. E.G., I.R.C. § 170(E)(4) (INCREASED DEDUCTIONS FOR CONTRIBUTIONS OF INVENTORY TO COLLEGE OR UNIVERSITY); § 44F (SPECIAL INVESTMENT CREDIT FOR RESEARCH GRANT TO COLLEGE OR UNIVERSITY.)

MOREOVER, MANY STATUTES AND REGULATIONS PROVIDE SPECIAL TAX BENEFITS TO RELIGIOUS SCHOOLS, AS DISTINCT FROM ALL OTHER SCHOOLS. MOST IMPORTANTLY, CONGRESS IN 1976 EXTENDED THE UNEMPLOYMENT TAXES TO ALL NONPROFIT SCHOOLS AND OTHER INSTITUTIONS, BUT EXPRESSLY EXEMPTED FROM UNEMPLOYMENT TAXES SERVICES PERFORMED --

> (1) IN THE EMPLOY OF (A) A CHURCH OR CONVENTION OR ASSOCIATION OF CHURCHES, OR (B) AN ORGANIZATION WHICH IS OPERATED PRIMARILY FOR RELIGIOUS PURPOSES AND WHICH IS OPERATED, SUPERVISED, CONTROLLED, OR PRINCIPALLY SUPPORTED BY A CHURCH OR CONVENTION OR ASSOCIATION OF CHURCHES * * * [I.R.C. § 3309(A)(1)(A).]

IN ST. MARTIN LUTHERAN CHURCH V. SOUTH DAKOTA, SUPRA, THE SUPREME COURT HELD THAT THIS STATUTE EXEMPTED ALL WAGES OF ALL CHURCH-CONTROLLED SCHOOL EMPLOYEES, NOT JUST THAT PART OF WAGES PAID FOR STRICTLY RELIGIOUS DUTIES. PUBLIC SCHOOLS, AND NONRELIGIOUS PRIVATE SCHOOLS, MUST PAY THE FULL TAX, HOWEVER. THE COURT NOTED THAT ANY OTHER INTERPRETATION WOULD RAISE SERIOUS CONSTITUTIONAL QUESTIONS. (451 U.S. AT 780.) THUS THE COURT HAS VERY RECENTLY APPROVED THE PREFERENTIAL TAX TREATMENT OF RELIGIOUS SCHOOLS IN THE FEDERAL TAX CODE. UNDER CODE SECTION 3309 AS INTERPRETED BY THE SUPREME COURT, PRIVATE SCHOOLS CONTROLLED BY A CHURCH ARE EXEMPT FROM THE UNEMPLOYMENT TAXES, WHILE ALL PUBLIC SCHOOLS AND NONRELIGIOUS PRIVATE SCHOOLS MUST

PAY UNEMPLOYMENT TAX (OR PROVIDE SUBSTITUTE UNEMPLOYMENT INSURANCE REIMBURSEMENTS).

SIMILARLY, MINISTERS, AND MEMBERS OF RELIGIOUS ORDERS WHO TEACH IN SCHOOLS CONTROLLED BY THEIR CHURCH, ARE EXEMPT FROM FICA AND UNEMPLOYMENT TAX, EVEN THOUGH ALL PUBLIC AND PRIVATE SCHOOLS MUST PAY FICA AND UNEMPLOYMENT TAX RESPECTING NON-CLERICAL TEACHERS.[11/] (I.R.C. § 3121(B), 3309(A).) SUCH MINISTERS AND RELIGIOUS ORDER MEMBERS MAY ALSO ELECT NOT TO PAY SELF-EMPLOYMENT TAXES. (I.R.C. § 1402(E).

GIVEN THE LONG HISTORY OF THIS PANOPLY OF FEDERAL STATUTES GRANTING TAX EXEMPTIONS AND DEDUCTIONS FOR THE FINANCIAL BENEFIT OF NONPROFIT SCHOOLS, IT IS NOT SURPRISING THAT THE CONGRESS, THE TREASURY DEPARTMENT, AND THE COURTS HAVE COME TO ASSUME THEIR VALIDITY UNDER THE FIRST AMENDMENT. INDEED, IN THE BOB JONES-GOLDSBORO CASES[12/] NOW BEFORE THE SUPREME COURT, THE CONSTITUTIONALITY OF THESE PRIVATE SCHOOL FINANCIAL BENEFIT STATUTES IS ASSUMED BY ALL THE PARTICIPANTS; INDEED, THE ISSUE IS WHETHER RELIGIOUS SCHOOLS ARE ENTITLED TO FINANCIAL BENEFITS PROVIDED BY CODE SECTION 170 WITHOUT COMPLYING WITH THE RACIAL DISCRIMINATION LIMITATIONS IMPOSED ON NONRELIGIOUS NONPROFIT SCHOOLS GENERALLY.

IN SUM, IT IS CLEAR THAT A COMPLEX STATUTORY SYSTEM FOR FAIRLY TAXING NET INCOME DEMANDS CONSIDERABLE SPECIAL

[11/] IN STATES WHICH HAVE WITHDRAWN FROM THE SOCIAL SECURITY SYSTEM, NO FICA TAXES NEED BE PAID.

[12/] 1982 OCT. TERM. NOS. 81-1, 81-3.

ACCOMMODATIONS FOR ALL TYPES OF SCHOOLS, AND FOR MONEY SPENT TO SUPPORT AND ATTEND THEM. FROM THE EARLIEST DAYS, CONGRESS HAS RECOGNIZED THE NEED TO ENACT SUCH ACCOMMODATIONS INTO THE INTERNAL REVENUE CODE AND ITS PREDECESSORS. THE BILL UNDER CONSIDERATION HERE IS NECESSARY TO OFFSET OTHER RECENTLY ENACTED FEDERAL BURDENS ON PRIVATE SCHOOLS, AND TO ASSIST SUCH ELEEMOSYNARY INSTITUTIONS TO COPE WITH OTHER EXTRAORDINARY FINANCIAL BURDENS.

WE SUGGEST THAT THE PROPOSED TAX CREDIT FOR SCHOOL TUITION IS WELL WITHIN THE PRECEDENT AND TRADITION OF THE ABOVE TAX BENEFITS FOR CLASSES OF PRIVATE AND/OR PUBLIC SCHOOLS. INDEED, THE PROPOSED TAX CREDIT FOR TUITION IS LESS OF A BENEFIT TO SUCH SCHOOLS THAN THE VARIOUS DEDUCTIONS FOR CHARITABLE GIFTS TO SUCH SCHOOLS, SINCE A GIFT GIVES MORE FINANCIAL BENEFIT TO THE SCHOOL THAN TUITION PAID FOR SERVICES.

THE SUPREME COURT HAS ALWAYS RECOGNIZED THE BREADTH OF CONGRESS' TAXING POWER, AND ITS NEED FOR MAXIMUM FLEXIBILITY IN ESTABLISHING EXEMPTIONS, DEDUCTIONS, CREDITS AND THE LIKE FOR VARIOUS TYPES OF INCOME AND TAXPAYERS. FOR THIS REASON, THE SUPREME COURT HAS NEVER HELD AN INCOME TAX STATUTE INVALID OR UNCONSTITUTIONAL SINCE THE PASSAGE OF THE SIXTEENTH AMENDMENT IN 1913. BY CONTRAST, STATE STATUTES -- WHICH ARE INHERENTLY SUBJECT TO INFLUENCE FROM NARROWER PAROCHIAL CONSENSUS -- HAVE FREQUENTLY BEEN HELD UNCONSTITUTIONAL. CONGRESS SHOULD EXERCISE ITS TAXING POWER HERE, UNDETERRED BY UNSUPPORTED FEARS OF ESTABLISHMENT-OF-RELIGION OR UNCONTROLLED FISCAL EXCESSES.

Testimony Before

United States Senate

Finance Committee

April 28, 1983

Washington, D. C.

2000
EDUCATING FOR
EXCELLENCE

Archdiocese of New Orleans • Department of Education
7887 Walmsley Avenue, New Orleans, Louisiana 70125 / Phone (504) 861-9521

Senator Dole, Chairman, and Members of the Committee:

I am Leonard Fine, Assistant Superintendent of Schools for the Archdiocese of New Orleans. I am representing The Louisiana Catholic Conference, and the Catholic school superintendents from six Catholic dioceses of Louisiana. These six dioceses have a total student enrollment of one hundred and fifteen thousand students.

Today providing educational opportunities for all on an equal basis is perhaps the most important function of our goverment. Education is required in the performance of our most basic public responsibilities, even service in the armed forces. Education provides the very foundation of good citizenship. Education today is a principle instrument in awakening the child to cultural values, in preparing the student for later professional training and helping the student to adjust normally to his/her enviroment. In todays society, it is doubtful that any child may reasonably be expected to succeed in life if he/she is denied the opportunity of an education. Because nonpublic as well as public schools contribute in building the "foundation of good citizenship", they too merit consideration when congress makes available a benefit in the educational area.

It is in this regard that I appear before you and ask for enactment of the proposed Tuition Tax Credit Legislation. In support of my request, I offer the following points of testimonial fact. Just as parents choose for their children, their food, their clothing, vacation, or home, so should these parents be able to choose for their children the proper school. Having this choice provides the family with dignity and self worth. The denial of this choice is one of the greatest degradations of poverty. Poor families are still denied a choice of schools. Most are imprisoned in ghetto public schools and for many, this means a life of functional illiteracy, unemployment and poverty. Poor families must have the right to choose schools of high quality, public or nonpublic. Poor families must demand that goverment emancipate them from inferior ghetto schools, and give them a choice of quality public and nonpublic schools. All parents must have the right to choose for their dependents the best possible educational alternatives. Tuition Tax Credits would have the direct effect of enabling the tax-payer to exercise broader selection in the way his/her dependents are educated. I am also here representing the sixty thousand Catholic school students from the Archdiocese of New Orleans. In the city of New Orleans fifty-two percent of the children attending our schools are of various minority groups, and this number is growing each school year. Black children in the inner-city nonpublic schools are doing exceptionally well. Hundreds of thousands of other black children would do equally well if given the chance to choose quality schools. Tuition Tax Credits would serve all students on an equal basis, and would help provide education to all parents.

We in the Archdiocese of New Orleans, and in the other five dioceses of Louisiana, believe very strongly that as a general proposition and as a matter of public policy, parochial school students are entitled to the same benefits and services as public school students are. It is simply wrong that because the goverment has decided to go into the education business and directly sponsor schools, those schools are the only acceptable vehicle for the goverment to meet the responsibilities to all children. Tuition Tax Credits would continue to provide other avenues for parents to choose.

In summation, the Tuition Tax Credit Legislation must be passed so education opportunities can be provided for all students on an equal basis. Parents must be allowed to make choices as regards the education of their children, and poor families must have an alternative to ghetto based inferior schools.

Testimony

by

Mrs. Mary Ann Babendrier

My name is Mrs. Mary Ann Babendrier. I am the parent of thirteen children who have all attended parochial elementary and secondary schools. I have had children in the parochial school system for the last twenty-one years. My husband is employed by the Federal Government and in the early years of our marriage held two jobs in order to meet tuition, school transportation and other school expenses. Although several of our children are now in college or have completed their formal educational training, our school expenses last year were in excess of $7,000.00.

My husband and I believe that education must deal with the total person and religious education is essential to this concept. We believe that religious education reinforces home religious training and gives the individual sound principles for moral decision making.

Thirty years ago the climate of society was much different than it is today. We are concerned more than ever that education offer discipline and moral principles for decision making. I urge your support of Tuition Tax Credits to offer assistance to parents who wish to send their children to a nonpublic private or parochial school. My husband and I firmly believe it is a constitutional right to receive such support.

Testimony

by

Mrs. Helen W. Brice

Good Afternoon:

My name is Mrs. Helen Brice. I am a retired school teacher from the D.C. Public School System. I taught for twenty-two years in that system. My two daughters began their formal education in public schools.

Despite considerable opposition from my fellow teachers, my husband and I decided to enroll both children in private schools. We did so because private schools teach moral values and help students make decisions which assist them in coping with the many conflicts they will face in daily life, especially social, racial, and moral conflicts. In addition to this, private schools have an atmosphere of discipline, uncommon in most public schools, and are able to advance students to grade level or beyond.

Although my daughters are now out of college, I urge the support of Tuition Tax Credits because this would afford many more parents with low income assistance in choosing a nonpublic school education for their children.

During the summer I teach classes in enrichment courses in a private school. About 90% of the students are from public schools and they give up their vacation time to attend this program because it offers them curriculum material in reading, math and English that they were not able to grasp during the school year. Public school teachers have told me that students who attended this summer school achieved more in their classes than students who did not attend. They asked that it be continued.

My husband and I sacrificed to send our daughters to private schools with no assistance. I hope in the future parents will have assistance to help them make a choice in the education they wish for their children.

Testimony

by

Frances Bell

Good afternoon, my name is Frances Bell and I am a resident of the District of Columbia. I am self-employed and I support myself and two sons. One son is in an elementary parochial school and the other son is in a parochial high school.

Last year my tuition, books and fees amounted to over $2,200. I am also a single parent and female head of the household, so the burden of tuition adds to our total financial burden.

The reason my children are in Catholic schools is one of education. It is my belief that if they are not sufficiently prepared to go into the world as adults and earn a substantial and decent living, then they in turn will not be decent, substantial adults. My earlier experience with the public schools was that the education is not adequate, and I shopped for parochial schools as you would shop for a house or a car, and I found schools to fit their needs and what I feel are their goals and desires.

I hope to try to keep them in parochial schools because of the education they are getting, the leadership training they are getting, and the religious background of these schools.

I also feel that without this they will not be able to get into the better colleges or into the better jobs as adults. If this particular bill passes, and because of my income and my financial situation, I think it will aid our family financially. It will aid us spiritually and will also aid us as a family because if our financial burden is eased, so will our life style.

I would also like to add that I am the total support of a disabled mother.

Thank you.

Testimony

by

Mrs. Lydia Jones

April 28, 1983

For me to be privileged to address this Committee is indeed satisfying.

For years I have entered voting booths, pulled levers and wondered if anyone really cared to hear my thoughts on any issue.

My name is Lydia Jones. I have worked for Batelle Columbus Labs Washington Operations Office, but have been unemployed for three years. I am the mother of, and have responsibility for, seven children ages nine (9) to eighteen (18). Three attend St. Margaret's School, one St. Patrick's Academy and two Mackin Catholic High and one attends college.

I choose to sacrifice to keep them there because I believe it is an investment that will bring dividends that will last a lifetime for them and for me. I am not materially wealthy, but I will continue to try to keep them in parochial schools.

To paraphrase Safeway Stores slogan, you get everything you want from a school and a little bit more. They are on the receiving end of genuine concern and love and I watch as they in turn, learn to care about others as well as themselves. They do without unnecessary things, usually, but not always, without complaints, because each in his or her own way understands the sacrifices entailed in keeping them in Catholic schools. They want to be there, I want them there and passage of this Bill would aid me and other parents in continuing to provide this opportunity.

# # #

Testimony

by

Mrs. Carmen Madden

April 28, 1983

I am Mrs. Madden. I am Puerto Rican. I am a housewife. My husband works at Goddard Space Flight Center. I have five children ranging in age from 7 to 12 years. All my children attend Sacred Heart School. Next September my oldest son will be attending Gonzaga College High School. I will be paying $3,000 in tuition, plus $150.00 for books. I will pay approximately $1,325.00 per year tuition for my other four children attending Sacred Heart School, plus $60.00 per child for books and supplies.

Both my husband and I attended parochial school. I started my children in the public school system because when my oldest child was five years old our local parochial school did not have a kindergarten. I kept the children in public school until the second grade when I determined that the public school education was not adequate. When the children were first transferred to the Catholic school their scores on the national SRA test were below grade level. After being at Sacred Heart School for a year, their scores went up above grade level.

I want my children to attend a Catholic school that supports my own philosophy and moral values and provides adequate discipline. The children themselves prefer the Catholic school to the public school.

Because most of the parents at Sacred Heart School have to sacrifice to pay their children's expenses, the pastor established a program by which parents could deduct a certain amount of the tuition if they worked on school projects.

Since our five children are so close in age, expenses for their education becomes substantial as they advance in school. We, therefore, ask that you please support this Tuition Tax Credit legislation. Thank you.

Testimony

by

Mr. Richard Sylvester

Good afternoon, I am Richard J. Sylvester. I work for the United States Department of Commerce, Office of the Secretary, 14th and Constitution Avenue, N. W. My annual income is $16,406.00. I support my wife and four children, three of school age. My older daughter, Angela attends St. Cecilia's Academy. The tuition at St. Cecilia's Academy is approximately $1,000. Although we received a grant, we pay a balance of $775.00 plus books, uniforms and other expenses that accrue over the school year. St. Cecilia's Academy is not in walking distance for Angela; transportation and lunch are added expenses. $1.20 for the bus ride and $1.75 for lunch.

Richard, my older son, and Kelly Teresa, my younger daughter, attend Assumption Catholic School, both on scholarships or grants. For Richard and Kelly there are books, uniforms and miscellaneous expenses. They too must ride a bus to and from school and must bring and buy part of their lunch.

Over the years I have cut corners and sacrificed even the necessities to keep my children in a parochial school. I can visualize even more difficult times in the future with the rising cost of living.

I am deeply concerned for my children's education. I have experienced both the public and parochial school systems. I attended parochial school in the State of Louisiana from grade 1 through 8. At the parochial school there was discipline and a very high quality of education. There, the teachers were concerned with education and teaching respect. Making the transition into the public school was not an easy task. Very quickly I learned the teachers were concerned about their paycheck, not your education. Even then the old statement was popular, "I got mine, you get yours."

When I graduated from that public high school I went to the University of Southwestern and realized I was only an average 10th grade student.

I would not want my children to experience what I did. I would like them to have the type of education that would enable them to enter a University and live productive lives. For that education I chose the parochial schools, because of my experience.

I am deeply in favor of the tuition tax credit bill.

Thank you.

Senator DURENBERGER. Rabbi Lubinsky?

STATEMENT OF RABBI MENACHEM LUBINSKY, DIRECTOR, GOVERNMENT AND PUBLIC AFFAIRS, AGUDATH ISRAEL OF AMERICA, NEW YORK, N.Y.

Rabbi LUBINSKY. Mr. Chairman, I am representing Agudath Israel of America, a 61-year-old national coalition of Orthodox Jews headed by the Nation's most eminent scholars.

I am here to represent the interests of 500 Jewish schools and 110,000 students.

I want to respond to a previous witness who spoke about how well Jewish schools have flourished. True. It was helped by a sympathetic and supportive Jewish community, but also because of the everchanging and more favorable attitude of the States and even the National Government.

Our attorneys are convinced that this bill is constitutionally sound. We certainly do not need outside agencies or defenders to tell us what is good or is not good for us. At the very least, since there are apparently differences of opinion as to its constitutionality, let's give the Supreme Court a chance—that's what they are there for.

This bill is modest. It won't change anything. It won't take children out of public schools. It is ludicrous to believe that a $300 tuition tax credit is going to encourage someone who now has a free education to change schools. None of the other Federal programs—title I, now chapter I, or textbooks—have done that, and certainly higher education is a good example of that.

The average cost of educating a Jewish child in an elementary school has risen to $2,403; yet the average tuition is somewhat about $1,200. Who is making up the difference?

This bill goes a long way in guaranteeing that the measure won't assist schools that racially discriminate. What other reasons can there be for not passing this bill?

You know, on a personal note, I am the son of a Holocaust survivor, and the other day I told my father that I would be coming here to testify. And he remembers fondly the day when he filed his first tax return after coming here from the ravages of Europe. He told me that what impressed him the most was that the contribution that he made to his synagogue was tax-deductible, and that he was able to practice his religion and get recognition from the Government for aiding that institution.

He said to me:

> What I can't understand is, how is it that now, almost 35 years later, the Government still won't give us official recognition of the fact that I have a right to send you to a religious school, when in fact that school teaches you—about 50 or 60 percent of that day—teaches you what the Government wants you to be taught: math, science, history, and the like?

Just by way of concluding, I want to say that in the Jewish community we have particularly high stakes in this bill. We have large families, that are paying not for one child but for six to eight children at the same time. We are already incurring higher costs for the observance of our religion for such items as kosher food.

The whole debate is just ludicrous. It is fraught with hysteria—people believing that there will be layoffs of public school teachers, and that the barriers of church and State will be removed. Thank God we still have "In God We Trust" on our currency, and we still give tax deductions for religion.

Nothing will change, but it will give diversity; it will give recognition to pluralism in education. The time for tuition tax credits has come.

Thank you.

Senator DURENBERGER. Thank you very much.

[Rabbi Lubinsky's prepared statement follows:]

AGUDATH ISRAEL
OF AMERICA
הסתדרות
אגודת ישראל
באמריקה

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STATEMENT OF RABBI MENACHEM LUBINSKY

DIRECTOR OF GOVERNMENT AND PUBLIC AFFAIRS OF

AGUDATH ISRAEL OF AMERICA

BEFORE THE SENATE FINANCE COMMITTEE

THURSDAY, APRIL 28TH, 1983

Mr. Chairman and members of the Committee: My name is Rabbi Menachem Lubinsky and I am the Director of Government and Public Affairs of Agudath Israel of America, a 61 year old national Orthodox Jewish movement headed by the nation's most eminent scholars. Our Campaign to Relieve Independent Education consists of a network of committees of parents and grassroots Jews in 31 states in support of tuition tax credits.

On August 15th, 1972, the President of Agudath Israel of America, Rabbi Morris Sherer, first testified in support of tuition tax credits before the House Ways and Means Committee. Since that time, our organization has on numerous occasions appeared before this committee and the subcommittee to address tuition tax credits. Rather than to review the overall merits, I would just like to address my remarks to some brief points about the most recent bill which was introduced by the chairman on February 17th (S. 528).

Our attorneys are convinced that this bill is constitutionally sound. To be overzealous in the constitutional interpretation of tuition tax credits is not to protect our traditional separation of church and state. It is, in fact, to deny the rights of

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DIVISIONS: National Youth Commission/Zeirei Agudath Israel/Bnos Agudath Israel/Pirchei Agudath Israel/Bachurei Agudath Israel/Agudath Women's Organization/N'shei Agudath Israel/Camp Agudah/Camp Bnos/The Jewish Observer/Dos Yiddishe Vort/Commission on Legislation and Civic Action/Commission on Israel/Commission on Overseas Rescue and Relief/Commission on Social Services/Commission on Senior Citizens/Project COPE (Career Opportunities and Preparation for Employment)/COPE Vocational Institute/Commission on Latin American Jewry/National Commission on Jewish Ethnic Affairs (Judaiscope)/Southern Brooklyn Community Organization/Commission on Branch Service and Development/Commission on Adult Torah Education/Daf Yomi/Jewish Education Program (JEP)/Torah Education Network (Reshet Shiurei Torah)/Torah Action Program (TAP)/Project RISE (Russian Immigrant Services and Education)/Russian Immigrant Rescue Fund/Project YAD for Russian Jewry/Agudah Benevolent Society/Chevra Ozeh Chesed

parents to select the school of their choice. In the very least, since there are apparently differences of opinion, we should give this concept a chance by letting the United States Supreme Court decide the issue. Our lawyers are unanimous in the feeling that various previcus state cases cannot be used as a precedent in deciding the constitutionality of this tuition tax credit bill.

We believe that the Administration's bill is not a boondoggle for the rich, as some have charged. Its modest cap of $300 when the bill is fully effective in 1985 and its income ceiling assures that the bill would go mainly to poor middle and working class parents. In Jewish sponsored schools, which number over 500 representing 110,000, the vast majority of parents fall into these categories. Other educational systems, most notably Catholic schools, by and large cater to lower and middle income parents.

It is ludicrous to believe that a $300 tuition tax credit will destroy our nation's public schools, which we firmly support. $300 will not make the difference for parents who will have to decide between a free education and a relatively expensive education, even with a $300 tax credit. None of the other federal programs over the last decade and a half have had the effect of eroding the base of public schools. Neither Title I nor state mandated services or any other financial aid programs have in any way shifted the population from public schools.

The same is true incidentally in higher education as well. There are those who argue that tax credits is but a foot in the door and that eventually the credit would be raised. Even if this were to be true, an increased credit will not keep pace with the mounting cost of operating a private school. Tuition by lower and middle income families will certainly not keep pace.

The average cost of educating a child in a Jewish elementary school is $2,403.56. The average cost in high schools is $3,440.56. Both figures are well below the cost in most major cities for educating a child in a public school. But even as the cost for elementary schools, for example, is $2,403, the average tuition is $1,317.08, leaving the school with the task to somehow make up the difference of $1,086.48, and for high schools where the average cost per student was $3,440, the average tuition is $1,498, leaving the school to make up $1,942. That is the average, which certainly does not factor in those youngsters who are on full or partial scholarship. No child as far as I know, is ever turned away because they cannot pay or, for that matter, on any other basis.

This bill goes a long way in guaranteeing that the measure would in no way assist schools that racially discriminate. The language in the bill which this committee passed last year goes beyond any previous anti-discrimination provisions. In fact, its language is even stronger than any previous anti-discrimination language in any measure that was designed to help both public and non-public schools.

What other reason then can there be to prevent this bill from passage? Parents of children in private schools look to tuition tax credits as somewhat of a relief in their overwhelming burden. The case which they often make is that they are forced to shoulder a double burden of financing public schools as well as their own children's education. If one considers the multiple child family in the Jewish community where six and eight children in a family is not uncommon, the cost can be staggering. I think of grandchildren of Holocaust survivors who came to this country because they truly wanted to benefit from a land of opportunity and choice. Yet they were being told that this country only sanctions one form of education. The very same people that argue that a competing postal system would speed mail delivery cannot see their way in sanctioning a dual educational system.

This debate on tuition tax credits has at times escaped logic. I have heard and read arguments that on the day after tuition tax credits was passed, mass layoffs of teachers in the public school system could be expected. I have heard that the traditional barriers of church-state would be removed, when in fact religion already plays such an important role in our life, from the G-d we trust on our dollar bills to the tax deductions we grant to taxpayers who make contributions to their synagogues and churches. I have heard of those who fear the discrimination academies but for some reason no longer trust government to enforce its own regulations as this bill does.

In addition to my capacity as representative of Agudath Israel of America, which has served as the legislative spokesman for Jewish day schools for so many years, I am here also to represent the National Society of Hebrew Day Schools, which is the educational arm of most of the Jewish sponsored schools. We know that our schools are not elitist academies, that in New York State, for example, of 200 schools and 66,000 students nearly half come from poverty or near poverty backgrounds. We must also consider that these are the same parents who also have considerably higher living costs because of the large expense incurred to meet such religious requirements as kosher food. Tuition tax credits, in fact, is a question of survival for a large number of Jewish parents, particularly those with large families.

It seems odd at times that we should have given recognition to people who insulated their homes because we wanted them to conserve energy, or for child care because we recognize that two parents in a home may have to work, but that we cannot somehow find it in our hearts to tell parents, yes, you do have the right to educate your child in whatever school you choose. No, we will not pay for the cost of educating your child, but in recognition of your burden and in recognition of the priority we place in education, we will grant you a small tax credit. That is what this issue is all about. Let us pass Senate Bill 528 now.

Senator **Durenburger**. Sister Renee?

STATEMENT OF SISTER RENEE OLIVER, ASSOCIATE DIRECTOR, CITIZENS FOR EDUCATIONAL FREEDOM, WASHINGTON, D.C.

Sister **Renee**. Thank you, Senator.

I would like to submit my testimony and just, if you don't mind, raise some points that I think should be emphasized this afternoon. And if you will excuse the lack of transitions from one point to another, I will just run through them.

Senator **Durenberger**. Fine.

Sister **Renee**. First of all, I am Sister Renee Oliver, associate director of Citizens for Educational Freedom. Thank you for the opportunity to speak to you.

Citizens for Educational Freedom is a national nonsectarian and nonpartisan organization made up of parents who are concerned that their rights in education are not being recognized.

Members believe, as I am sure you do, that the educational responsibility does not originate with the State but rather that the ultimate responsibility for children belongs to parents.

I am sure that you are aware that virtually every free western democracy provides some measure of Government support for denominational schools. Of 75 free countries, 65 give direct aid to nongovernment schools.

In the early days of this country most schools were private, church-sponsored, and tax supported. All schools received money from the Government, and all were considered "public schools," not because they were agencies of the Government but because they were educating children for the public good.

I think that it's time that we got back to that idea, that we differentiate between "public schools" and "public education." I think every school that is educating the public should be considered a public school and should be accorded the same treatment.

Today we know that education is mandated by law in every State of the Union, and parents are required to educate their children despite their ability or inability to find and afford a school that agrees with their own personal values.

In some instances the Compulsory Education Law forces parents to act contrary to their own conscience, which is a clear violation of the Free Exercise Clause of the first amendment.

We find, too, that more and more parents who cannot in conscience send their children to the assigned public school, but cannot afford the nonpublic school of their choice, are taking their children out of school to educate them at home. We notice that there is almost a home-school protest movement going on across the country. Obviously this is not the best solution for these children, but the parents see it as the lesser of two evils.

To those who argue that parents already have the freedom to choose, I point out that they may do so only at a loss of their educational tax dollars. If one is on food stamps, he does not have to take those to a Government store. If one is on medicare, he does not have to go to a Government hospital. But if one wants to benefit from his educational tax dollars for elementary and secondary education, he must do so only at a Government school.

It is inconsistent with those supporters of public schools who view them as bastions of democracy that they cannot see the danger to that same democracy by a single educational system supported by, and hence basically controlled by, the State. If we follow their arguments to their logical conclusions, the result would be the elimination of all nonpublic schools except for those for the most wealthy, which is certainly a danger to the democracy that they seek to protect.

Parents who send their children to nonpublic schools today are saving the taxpayers $13 billion a year. If those children are forced back into the public sector, the public sector is going to have to make up that $13 billion.

This committee has said that, when fully implemented, S. 528 will cost about $800 million. The public school budget—local, State, and Federal—is $99 billion. That means that parents would be allowed to keep in their own pockets eight-tenths of 1 percent of the amount of money that is being spent in this country on public education.

It would seem to me that there is an awful lot of talk and confusion and almost quibbling over eight-tenths of 1 percent of the amount of money that is being spent on public education when we ask that parents be allowed to keep that money in their own pockets.

I know, Senator Boren, that you regard that as a Federal subsidy. I am sorry, but I really find that rather shocking. To me what it says is that all money belongs to the Government, and the Government is doing you a favor if it allows you to keep some.

Senator BOREN. I would be glad to cut the taxes that much, but if it is for everybody, and not tie it to being spent for a specific purpose.

Sister RENEE. If we look at all of the tax credit currently on the back of the 1040 form, I think their purpose is to encourage the public to engage in activities that are directed toward the common good. The first thing on that list is a contribution to a political campaign. Another credit is for tuition for day care even if it is church day care, you may take a credit for that. If you insulate your home, you may take a credit for that. I have not heard anybody say that the Federal Government is directly subsidizing, for instance, Johns Manville, who makes the insulation. Nobody calls that a direct subsidy to them.

Nobody considers it a direct Federal subsidy to the Senators on this committee when they benefit from a tax credit. And neither are there all kinds of strings attached to those credits; and yet I constantly hear people at this hearing trying to put strings on this tuition tax credit bill.

At the present time the tuition tax credit bill is the only vehicle we have that would provide some measure of relief to parents who send their children to nongovernment schools.

I think it is laudable that we take care of sex discrimination and discrimination against the handicapped and racial discrimination, but I don't think that this bill should be the vehicle to do that, as laudable as all of those things are. I feel that this bill is aimed specifically to give some kind of relief to parents who send their children to nongovernment schools, and that we should try to keep the purpose of this bill clear by not encumbering it with a lot of other issues.

Senator **Durenberger**. Are you near the end, Sister?

Sister **Renee**. I am, except I would like to answer a couple of the questions that some of you raised this morning about the value of a $300 credit if schools just turn around and increase tuition by $300. I think that would put them in an impossible position; we would lose most of the children that we are trying to hold onto.

Right now in the city of Cleveland my Ursuline community is subsidizing six innercity schools. We honestly cannot continue to do that much longer; and yet we cannot raise the tuition to those schools, because it would force those children out of our schools and some of them into practically a noneducation situation.

We need some kind of relief, and we are looking to this bill to provide it. We ask this committee and this Congress to please pass S. 528.

Thank you.

[Sister Renee Oliver's prepared statement follows:]

SISTER RENEE OLIVER

ASSOCIATE DIRECTOR

CITIZENS FOR EDUCATIONAL FREEDOM

I am Sister Renee Oliver, Associate Director Of Citizens for Educational Freedom. I wish to thank the members of the Committee for the opportunity to speak to you on the very important topic of parental rights in education.

Citizens for Educational Freedom is a national, non-sectarian and non-partisan organization made up of parents who are concerned that their rights in education are not being recognized.

Members believe, as I am sure you do, that the educational responsibility does not originate with the state, but rather that the ultimate responsibility for children belongs to parents. In 1925, the United States Supreme Court upheld the right of parents to choose the education of their children. Likewise the United Nations Declaration on Human Rights, to which this country subscribes, also acknowledges the prior right of parents to choose the education they want for their children.

Scholars in many fields have been pointing out with increasing frequency that most democratic states throughout the world recognize the prior right of parents. Although the particular form and extent of an equitable, pluralistic system of education varies in different countries, most democratic states acknowledge the fundamental right of parents to choose the kind of edcation they desire for their children and do not discriminate in the allocation of public funds among individuals, groups or institutions. With the exception of the United States, virtually every western democracy provides some measure of government support for demominational and alternative schools. According to a study by Dr. Daniel McGarry of St. Louis University, of some 75 free world countries, about 65 provide DIRECT public assistance for independent schools. In comparison, the United States has only a limited form of educational pluralism.

In the early days of this country, most education was private, church-sponsored and tax-supported. All schools receiving money from the government were considered "public" schools, not because they were agencies of the government, but because their education was providing a public service. Only since the Everson Case in 1947, has the Supreme Court decided to oppose relief to parents of non-government school children as a violation of the First Amendment. This has resulted in strengthening the goverment monopoly of education, paid for with taxes from all citizens, and thus creating a condition of second-class citizenship for children whose parents exercise their right of choice. In America a monopolistic church is not allowed, but in its place a monopolistic, public school system has been established.

The Supreme Court has not been consistent in its pronouncements either. The Court has ruled that the state may provide textbooks to non-government schools but not charts or maps (They have yet to rule on whether a book of maps is permissible). The Court has also ruled that the state may reimburse the schools for mandated services, but reimbursment for education itself -- which is compulsory -- is not permissible.

Unfortunately, past debate over constitutionality of relief to parents has focused upon the Establishment Clause of the First Amendment and ignored the Free Exercise Clause. Education is mandated by law in every state of the union. Parents are, therefore, required to educate their children despite their ability or inability to find and afford a school that agrees with their own personal values. In some instances the compulsory education law forces parents to act contrary to their own conscience, a clear violation of this Free Exercise Clause. In Sherbert v. Verner,(374 U.S.398,405-1963) the Supreme Court said, "...conditions upon public benefits cannot be sustained if they so operate, whatever their purpose, as to inhibit or deter the exercise of First Amendment freedoms." Therefore, no citizen should be required to give up one benefit (educational tax dollars) in order to enjoy another (free exercise of religion).

In addition, there are many parents who believe that limiting their access to educational tax dollars while requiring compulsory education is also a violation of the Fourteenth Amendment which guarantees them equal protection under the law. Clearly the poor are effectively denied their right of choice because they can neither afford to exercise choice nor refuse to attend school. The state has created a category of parents who, solely by reason of their economic status, must subject their children to a type of education in which they might not believe. This dilemma has led to what we call the "Home-school Protest Movement". More and more parents who cannot in conscience send their children to the assigned public school but cannot afford the non-public school of their choice, are taking their children out of school to educate them at home. While obviously a poor solution, they see it as the lessor of two evils.

To those who argue that parents already have the freedom to choose, I point out that they may do so only at a loss of their educational tax dollars. If one is on food stamps, he need not use them in a government store; if one is on Medicare, he need not go to a government hospital; a GI Bill need not be used at a state college or university. But if one wishes to benefit from his tax dollars for elementary and secondary education, he must do so in a government school. This is discriminatory, especially today when the cost of education is consuming more and more of the family budget.

According to the National Center for Educational Statistics, 62% of the families who send their children to non-government schools have incomes under $25,000 and only 10% earn over $50,000. According to another study by the Catholic League for Religious and Civil Rights on inner city nonpublic schools, 72% of these parents earn under $15,000. Obviously, these families must be under severe stress to come up with the tuition to these schools.

It is inconsistent that those supporters of public schools who view them as bastions of democracy cannot see the danger to that same democracy by a single educational system supported by--and hence basically controlled by-- the state. If we follow their arguments to their logical conclusions, the result would be the elimination of all non-public schools except those for the most weathy, an obvious danger to the democracy they seek to protect. Those who prize independence from state-directed thought must surely recognize that an alternative system of education for all who desire it is an essential characteristic of any true democracy. Otherwise we are in danger of promoting an eucational system that will result in an undifferentiated, homogeneous mass of citizens.

We also think it is time that we differentiate between public schools and public education. Every school that graduates well-educated students is participating in public education and should be treated equally as contributing to the common good. The state's concern should be that quality education is avalible to all, not where that education occurs.

There is a parallel here to the Bradfield v. Roberts case of 1899, where the Supreme Court viewed a hospital owned and operated by nuns as "a secular corporation being managed by people who hold to the doctrine of the Roman Catholic Church." The Court thought that as long as the hospital performed its purpose as stated in the articles of incorporation, the sectarian character of the hospital was of no matter. So it should be with schools that are doing a good job of educating the next generation of Americans.

Today there are approximately five million children in non-government schools in this country. At an average cost of $2,553 per child in a public school the parents of private school children are saving the American taxpayer almost $13 billion a year.

We don't think a tuition tax credit for this kind of saving is asking too much, especially if you look at the tax credits already listed on the back of an income tax form: for a political contribution, for insulating your home, and even for day care at a church-supported facility If I understand the purpose of these tax credits, it is to encourage the public to engage in activities which are directed toward the common good. Surely education should be foremost among them.

When fully implemented, S-528 will represent a tax loss of only $800 million. (5,000,000 children x $300 = $1.5 billion but all families will not be eligible for full credit. Usually less than 50% of those eligible claim a credit, so $800 million is a generous figure.) Let us compare this to the $99 billion public education budget, 100% of which is paid for by taxpayers. A tuition tax credit would mean that the parents of nonpublic school children would retain the equivalent of 8/10ths of 1% of the amount of money already allocated to public schools. This is hardly three times the federal money for public schools as claimed by the report of the American Association of School Administers. That report failed to take into consideration the $517 per pupil federal tax relief currently realized by public schools. Nor would tuition tax credit money come out of the public education budget any more than an energy credit comes out of the budget for the Department of Energy or a credit for a campaign contribution comes out of the Congressional budget. Public schools will continue to be funded at present levels, regardless of what happens to tuition tax credits. Nor will non-passage of tuition tax credits mean that public schools will get an additional $800,000,000. The two issues are mutually exclusive and should be viewed as such. But excellence in public and non-public schools are not mutually exclusive. This country should be able to maintain both. May I point out that there has been no destruction of public education in any of the other free countries of the world where dual support of both public and non-public education is practiced, nor did it happen in Minnesota during the 27 years when that state had an educational tax deduction in effect. (A practice now being challenged before the Supreme Court.)

We also think the argument that tuition tax credits will destroy public schools is an insult to the many excellent public schools we have in this country. It implies that people will continue to attend them only if forced to do so by financial penalty. We do not believe that we must build a financial Berlin Wall around public schools to keep students in. On the contrary we believe that public schools are and will continue to be the major source of education in this country. But we do not believe that any parent should be locked into a particular school or school system, especially if it results in a non-education for their children. Nor do we believe that a government monopoly of education is in the best interest of either government or education or children. Whenever you have a monopoly or a protective tariff, costs rise and quality declines. On the other hand, if parents are truly able to send their children where they will get the best education, that freedom of choice will generate the kind of competition that will lead to excellence in all schools, public and private.

To the argument that public schools will never be able to compete with non-public schools because the latter may refuse diffcult students, I would like to interject a personal observation that as a teacher of many years in parochial schools I have had children with all types of problems : deaf, blind, retarded, emotionally disturbed,etc. Non-public schools have always accepted these children and will continue to do so whenever possible. The only reason such children are sometimes refused is that some schools simply lack the money for facilities and faculty to give them the kind of education they need.

One final argument against tuition tax credits that we would like to address is the accusation that they will encourage racial segregation. Although it is obvious to anyone who has visited an inner city parochial school that the opposite is really the case, the Coleman research report should put that argument to rest once and for all. He says, "...we see that blacks and whites are substantially less segregated in the private sector than in the public sector." In fact Coleman states that those blacks with the means to pay for private schools have " higher enrollemt rates in Catholic schools than do whites of the same religious group." This leads to the

Coleman conclusion that those most likely to benefit from a program such as tuition tax credits would be lower income minorities. The report also shows that there is a higher percentage of minorities in private schools in states such as New York and California which have large minority populations than in public schools. The minority enrollment in New York's private schools alone exceeds 60%.

Another point which we think has been ignored in this area is the fact that almost every private school -even the most prestigious- provides scholarships to poor and minority students, thus achieving a racial mixture not possible in an all white suburban school.

In other areas, the number of minority students who have been refused admission because of discriminatory policies in a few schools is infinitessimal when compared to the vast numbers of minority children who have been prohibited from attending the schools of their choice because they could not afford the tuition.

Furthermore, all present legislation states quite clearly that no credit will be allowed to parents who send their children to schools that discriminate on the basis of race. This is in keeping with the strong stand against racial discrimination which CEF has always supported.

However, in spite of the number of pages in S-528 devoted to discrimination language, tuition tax credit legislation is not, and should not be, the vehicle to settle all the discrimination problems in our country, as laudable as that would be. We believe that there are other pieces of legislation that can better address those problems. Tuition Tax Credits, however, is the only means currently available to bring some measure of relief and justice to another civil rights issue: parents basic right to choose the education of their own children.

In summary, while a tuition tax credit is not the final answer to the problems of equity and quality in education, CEF believes that it will foster parental rights in education. This in turn, will promote the kind of competition that will encourage all schools and teachers to vie for excellence that can only be good for children, education and the future of this great country. Therefore, CEF believes that a tuition tax credit involves a policy which should be pursued by this Congress.

If the federal government assists education in any way, it must do so in a manner that equalizes educational oportunity for all children.

CEF

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TESTIMONY BEFORE THE UNITED STATES SENATE FINANCE COMMITTEE

April 28, 1983 -- Washington, D.C.

Senator Dole, chairman, members of the committee.

I am Kirby J. Ducote, Executive Director, Louisiana Federation, Citizens for Educational Freedom (CEF), New Orleans, La., and I am accompanied by Mr. Leonard Fine, Assistant Superintendent of Schools, Archdiocese of New Orleans, representing the Louisiana Catholic Conference and the Catholic school superintendents of the six dioceses of Louisiana, with schools enrolling 115,000 students.

I asked to be heard today in support of S. 528 because I am firmly convinced that the passage of this legislation will encourage parents of children attending nongovernment schools to keep their children in those schools, continuing to pay tuitions AND the necessary taxes for the operation of the government schools. All taxpayers should be eternally grateful.

The taxpayers will thank you because each time a child leaves the non-government school to attend a government school additional taxpayer monies are needed to educate that child. In Louisiana,the cost of educating a child in the government schools costs taxpayers an average of $2436 annually. The national average, as I understand, is considerably higher.

We have been fortunate in Louisiana because the State has recognized the importance of private education. The Louisiana Legislature has provided assistance to the non-government schools, as well as parents and children. The happy co-existence of government and non-government schools in Louisiana has enriched parental choice and saves taxpayers $350 million annually.

The assistance provided by the Legislature has encouraged parents of non-public school children in Louisiana to keep their children in those schools. As a result of the actions of the Louisiana Legislature, enrollment figures in the non-governmetn schools have remained almost static over the past five years while other states have witnessed declines in nonpublic school enrollment -- thus contributing to the ever-spiraling increase in the costs to taxpayers for public education.

In 1973-74, CEF and the Louisiana Catholic Conference were successful in changing the Louisiana Constitution, which had contained a Blain-type amendment prohibiting aid, directly or indirectly, to any church-related institution which performed a public service such as education. We not only struck the Blaine language but inserted this:

> "The (Louisiana) legislature shall provide for the education of the people of the state AND (emphasis added) shall establish and maintain a public educational system."

We urge Congress to take the same approach -- providing for the education of all the children of the nation AND for a public school system. Parents -- having different values, visions and educational desires for their children -- are demanding rights and choice in education. In passing tuition tax credits, you will help to preserve diversity, and flexibility, as well as competition and freedom in education. You also will help prevent an advent of monolithic uniformity, universal standardization, complete secularization and probable stagnation in education.

Government rightly encourages constructive activities and non-profit institutions which contribute to the public welfare as well as serve the interests of voluntary groups of private citizens. Private education definitely falls in this category and public policy should accordingly encourage it.

Granted, there's controversy in S. 528. But it represents thinking men's suggestions as to how to stimulate education in this country. At the same time it provides the opportunity to the taxpayer to choose to have some of his tax dollars for the purpose of assuring diversity, competitive spirit and freedom in education.

I urge that we should all be thinking along the lines of cooperation between government and nongovernment education, for without that cooperation all of our efforts move forward at half steam rather than full speed ahead.

Before that cooperation can begin, those who oppose any aid to children in nongovernment schools must realize this: Blind opposition to any aid only angers a large segment of taxpayers. Those are the taxpayers who pay tuitions for children at nongovernment schools as well as taxes to support a government school system which local and national publications, in growing numbers, condemn as sick at best, as terminally ill, at worst.

At the same time that the government schools come under scrutiny as never before in my lifetime, there is a growing library of studies and statistics showing that nongovernment schools are doing a good job, with far less money, and are serving the inner cities as well as the suburbs.

We declare that those of us who are fighting for tuition tax credits are not competing with the government and its schools. Rather, we are working to assure parental rights in the field of education and seek to assure quality education in both government and nongovernment schools.

In closing, may I point out that former President Nixon, in a statement to the National Catholic Educational Association, had raised the hopes of parents with children in nongovernment schools by promising to help them. Former President Carter -- just before his election -- held out similar hope to parents when he promised assistance in a message to the Chief Administrators of Catholic Education.

This administration likewise is on record -- and firmly on record -- in support of parental rights in education, through tuition tax credits. We remind the administration of this support and urge strong, up-front actions on their part IMMEDIATELY to guide the tuition tax credits to success.

Parents, forgotten by Nixon and openly turned upon by Carter, are saying over and over again that they want the choice in education which is offered by this administration's approach. The hopes of these parents should not be dashed again.

FOR IMMEDIATE RELEASE
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Kirby J. Ducote, Executive Director
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With public school costs in Louisiana topping $2 billion annually for the first time and revenues of the state on the decline, it is time to appreciate anew the near $400 million a year "bonus" contribution made to the state by nonpublic school parents, governmental representatives of the parents said today.

Kirby J. Ducote, executive director of the Louisiana Federation; Citizens for Educational Freedom (CEF), released CEF's annual analysis of statewide enrollment figures.

The analysis shows, he said, that nonpublic schools and their supporters make a contribution equaling $373,173,000 to the annual cost of educating Louisiana's elementary and high school students.

That is the amount, he said, that it would cost to educate Louisiana's 148,266 nonpublic school students in public schools.

Civil parish educational profiles -- for the 1981-82 school year -- are soon to be published by the State Department of Education. They reflect a decline in both public and nonpublic school students from the last report, for 1980-81.

According to the department's figures, public school enrollment stood at 762,471 in 1981-82 as compared with 773,549 in 1980-81. Nonpublic school enrollment was 148,266 in 1981-82 as compared with 152,455 in 1980-81.

Emile Comar, executive director for government programs for the Louisiana Catholic Conference and a vice-president of CEF, said the "continuing support of the state administration and the Legislature for both public and nonpublic education creates a harmonious educational environment which benefits Louisiana taxpayers."

"We believe there is recognition on the part of public officials of the bonus contribution which nonpublic school parents make through payment of both taxes and tuitions," Comar said, adding:

"Can you imagine the turmoil which would be created if nonpublic schools -- most of them under Catholic sponsorship -- could not continue to finance schools which educate some 150,000 students."

The growing need for public/private cooperation in the field of education, he said, is seen in the increasing cost of educating students in the government schools.

In 1980-81, he said, the State Department of Education showed the per pupil cost at $2085 as compared with $2436 in 1981-82.

(over)

"Nonpublic schools," said Ducote, "must be looked upon as a blessing by Louisiana taxpayers, particularly now that a new OPEC fight has decreased the price of oil and impacted Louisiana's revenue.

"We have a cushion which softens the impact of reduced revenues in Louisiana and that cushion is the fact that parents of nonpublic schools are supporting public education while at the same time keeping open the doors of nonpublic schools."

He said that each year when the figures are published critics say that the CEF compilation does not take into account "all that money" that comes from the state to nonpublic school parents and students.

"All the aids from the state to nonpublic school children," Ducote said,"average out to $173.04 per child. The total is less than $20 million."

This compares, he said, with the $2436 it cost in 1981-82 to educate a child in a public school and the total $2 billion public school tab.

"That's why we say that the state, with a little bit of sugar, is getting back its money more than tenfold while at the same time preserving parents' right to choose among schools which, naturally, have varying value systems," Ducote said.

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March 3, 1983

1981-82 LOUISIANA SCHOOL FIGURES

(Source: Louisiana State Department of Education, March 1983)

PARISH	PUBLIC SCHOOL STUDENTS	PER PUPIL COST PUBLIC SCHOOLS	NONPUBLIC SCHOOL STUDENTS	TAX SAVINGS EFFECTED BY NON-PUBLIC SCHOOLS
Acadia	10,602	$2,077	2,041	$4,239,157
Allen	4,843	2,138	---	---
Ascension	10,828	2,473	1,064	2,631,272
Assumption	5,252	2,106	504	1,061,424
Avoyelles	8,215	2,226	1,220	2,715,720
Beauregard	7,036	2,174	---	---
Bienville	4,052	2,209	205	452,845
Bossier	17,883	2,139	774	1,655,586
Caddo	44,496	2,468	7,957	19,637,876
Calcasieu	33,157	2,475	3,690	9,132,750
Caldwell	2,300	2,316	---	---
Cameron	2,106	3,511	---	---
Catahoula	2,701	2,660	---	---
Claiborne	3,361	2,323	316	734,068
Concordia	4,682	2,381	505	1,202,405
DeSoto	5,465	2,339	286	668,954
E. Baton Rouge	59,349	2,652	8,974*	23,799,048
E. Carroll	2,629	2,252	429	966,108
E. Feliciana	3,365	2,234	631	1,409,654
Evangeline	7,353	2,055	896	1,841,280
Franklin	5,439	2,393	234	559,962
Grant	3,816	2,129	---	---
Iberia	15,576	2,175	1,965	4,273,875
Iberville	6,262	2,928	1,022	2,992,416
Jackson	3,265	2,548	---	---
Jefferson	58,334	2,661	30,754	81,836,394
Jefferson Davis	7,014	2,173	502	1,090,846
Lafayette	25,971	3,205	5,213	16,707,665
Lafourche	17,797	2,025	2,596	5,256,900
LaSalle	3,431	2,247	---	---
Lincoln	5,896	2,173	910	1,977,430
Livingston	14,400	1,767	160	282,720
Madison	3,467	2,201	405	891,405
Morehouse	6,624	2,425	979	2,374,075
Natchitoches	7,393	2,727	1,192	3,250,584
Orleans	82,049	2,525	38,364	96,869,100
Ouachita	16,636	2,018	1,422	2,869,596
Plaquemines	5,223	2,375	551	1,308,625
Pointe Coupee	4,020	2,973	1,629	4,843,017
Rapides	23,727	2,306	3,563	8,216,278
Red River	1,902	2,365	327	773,355
Richland	3,854	2,739	378	1,035,342
Sabine	5,019	2,060	---	---
St. Bernard	10,083	2,512	2,591	6,508,592
St. Charles	8,002	4,467	601	2,684,667
St. Helena	2,382	2,316	---	---
St. James	4,591	2,697	385	1,038,345
St. John	5,858	2,516	2,478	6,234,648
St. Landry	18,965	2,358	3,808	8,979,264
St. Martin	8,990	2,250	853	1,919,250
St. Mary	12,783	2,705	2,237	6,051,085
St. Tammany	22,024	1,996	3,875	7,734,500
Tangipahoa	15,602	2,136	2,924	6,245,664
Tensas	1,636	2,479	346	857,734
Terrebonne	20,989	2,339	2,856	6,686,184
Union	4,083	2,156	132	284,592
Vermilion	9,239	2,652	1,172	3,108,144
Vernon	10,162	2,123	---	---
Washington	4,946	2,324	---	---
Webster	8,703	2,025	334	676,350
W. Baton Rouge	3,801	2,737	479	1,311,023
West Carroll	2,857	2,332	116	270,512
West Feliciana	1,777	3,111	---	---
Winn	3,796	2,455	---	---
City of Monroe	10,293	2,100	1,028	2,158,800
City of Bogalusa	4,120	2,214	394	872,316
	762,471	2,436(Avg.)	148,266	$373,173,402

* This is the figure for Catholic schools alone. Other nonpublic school figures not supplied by East Baton Rouge Parish.

+ The total figure on the state tabulation was 139,272, but that was compiled before the 8,974 students in Catholic schools of Baton Rouge were added. Because of non-reporting of other independent schools as noted in (*) above, the actual 1981-82 total figures for nonpublics probably stood near 151,000.

This report from the Louisiana Federation, Citizens for Educational Freedom
Post Office Box 53244, New Orleans, La. 70153

Senator **Durenberger**. Thank you all very much.

I would ask a question of all of the organizations represented here. Do any of you have a position against tuition tax credits for public schools?

Reverend **Gallagher**. No one does.

Senator **Durenberger**. No one does?

How about on the issue of educational vouchers? Does anyone have a position either for or against educational vouchers?

Mr. **Lehrfeld**. I would have to disclaim, because I am here as a tax counsel rather than somebody who is concerned directly with policy.

Senator **Durenberger**. You don't know whether the organizations you represent have a position?

Mr. **Lehrfeld**. I think that could be submitted for the record.

Senator **Durenberger**. All right. That would be helpful.

[Mr. Lehrfeld's information follows:]

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WILLIAM J. LEHRFELD
LEONARD J. HENZKE, JR.

May 24, 1983

Mr. Ed Danielson
Senate Committee on Finance
Room 2227, Dirksen Senate Office Building
Washington, D.C. 20510

Re: Testimony of William J. Lehrfeld
Transcript Page 215, Line 18

Dear Mr. Danielson:

In response to a question of Senator David Durenberger (R. Minn.), about favoring tuition vouchers as part of this legislation (Tr. p. 215) please be advised, that the Knights of Columbus does not support such vouchers as part of S. 528. To our knowledge, there is no satisfactory equivalen existing in the Internal Revenue Code relating to credits now available to taxpayers which is in any way similar to "vouchers" in a particular return year for the eligible individuals. Although IRC Sec. 43, dealing with earned income credits, has a refundability feature, the use of a carryforward or carryback of unused tuition credits would seem more consistent with other Code deductions including the charitable contribution. See, IRC Secs. 170(d) and 46(a)(1)(A) and (C).

Mr. Ed Danielson
May 24, 1983
Page Two

We would have no objection if the Congress offered taxpayers a credit carryback (to offset an income tax liability of a prior year) or a credit carryforward (to offset an income tax liability for a future year) if the value of a tuition tax credit can't be used due to the absence of federal income tax liability, for whatever reason. Because our information indicates that low income taxpayers receive the bulk of all financial aid in parochial schools, we don't believe the voucher system as part of a tax credit is the proper mode to enhance access to private schools to those least able to afford it.

Speaking for the Knights of Columbus alone on this point, we believe S. 528 is a tax provision and should, to the extent possible, follow existing precedents in the Internal Revenue Code relating either to credits in general or the charitable contribution deduction in particular. If the Internal Revenue Code's credit provisions are amended in a substantial number of cases to provide refunds or vouchers and we satisfied ourselves as to comparability to tuition tax credit vouchers, we would adapt our view to such a precedent established by Congress.

Very truly yours,

William J. Lehrfeld

WJL/bb

Rabbi LUBINSKY. We are in support of vouchers. We just don't know whether the administration's current bill is the vehicle for it.

Senator DURENBERGER. Right. I really mean the concept.

Rabbi LUBINSKY. Well, we are very much supportive of a concept of vouchers.

Senator DURENBERGER. And refundable tax credits? That is a third issue that has been raised here today. Does anyone have any objection to that?

Sister RENEE. Not at all.

Senator DURENBERGER. Thank you very much. I am going to have to leave and turn the hearing over to a Democrat—a very nice person. [Laughter.]

Senator BOREN. I thank the panel, and I apologize that I was called out during your testimony.

Mr. LEHRFELD. Senator Boren, if you would, grant us the opportunity to provide a reply to the insertion in the record of this law review article that we just heard of. We would like the opportunity to state our case within the 2 or 3 weeks' time that we have to provide something in response to that, because our belief is that there hasn't been a single Supreme Court decision affecting the Federal income tax since 1913 that declared an exemption, an exclusion, a deduction, or a credit unconstitutional.

Moreover, we believe there isn't any standing for anybody to qualify to sue to separate a deduction or credit in the Code on that basis. We would like to make that point in a separate submission.

Senator DURENBERGER. I think there is no problem with any of you, or any of the organizations you represent, adding material to the record on any of your testimony or on any of the questions raised.

I have raised the questions about these three, particularly, because—if you were here this morning when I made my opening statement and asked some of my questions—I am concerned about who is for financing choice in education and who is for limiting that choice.

Senator BOREN. I think we would welcome that, very much so, and any other data like that, within the reasons of length. But we would welcome having additional materials on both sides of the constitutional question.

[The material follows:]

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THE CONSTITUTIONALITY OF FEDERAL TUITION TAX CREDITS

I. Introduction and Summary

1. A recent student note in the April 1983 New York University Law Review discussed a line of judicial opinions dealing with the constitutionality of various state grant and tax statutes under the Establishment Clause. Savitt, "Laws Respecting an Establishment of Religion: An Inquiry into Tuition Tax Benefits", 58 N.Y.U.L. Rev. 206 (1983) (hereinafter "Savitt, at ___"). The student's article examines these cases, and applies legal principles drawn therefrom to conclude that S. 528 as presently drafted is unconstitutional.

As will be discussed more fully below, the student note considered only one aspect of the caselaw and other authority governing the constitutionality of S. 528, and arrived at the wrong conclusion. The thrust of the Savitt note is that the proposed federal tax statute is more similar to the state laws struck down by the U.S. Supreme Court in Committee for Public Education v. Nyquist, 413 U.S. 756 (1973), and its progeny, than the laws upheld in Walz v. Tax Commission, 397 U.S. 664 (1970). Savitt concludes that such credits fail to satisfy the second part of the four-part test used by the Supreme Court to determine constitutionality of a tax statute under the Establishment Clause -- that the statute must have a principal or primary effect that does not advance religion.[1] Tilton v. Richardson, 403 U.S. 672, 679 (1971); Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). The student's conclusion is that the federal tax statute would accordingly be held unconstitutional.

With all due deference to the faculty and students at New York University Law School, we believe that this approach too much resembles "choos[ing] among Supreme Court precedents as we would footwear -- selecting that which 'best fits the case before us.'" Wright v. Regan, 656 F.2d 820, 838 (D.C. Cir. 1981) (Tamm, J., dissenting). In our view, the Note's conclusion is based on an overly-simplistic formulation of the legal standards applicable to determining whether a federal income tax statute is within the power granted to Congress by the Constitution. Instead, we believe that further legal principles, in addition to those picked by Savitt from the Nyquist line of cases, are applicable.

The student note expressly disclaims any attempt to consider the implications of the Free Exercise Clause on the tuition tax credit issue (Savitt at 207 fn.5), and also passes over quickly any implications of the Constitutional Taxing Powers (id. at 235). While such isolation may be a useful scholarship tool, it does not reflect the Supreme Court's likely approach to such an issue. Even in cases involving whether state statutes violated the Establishment Clause, both Nyquist and Walz discussed the implication of the issue on Free Exercise rights and the exemption power of the State.

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[1] The other parts of the test are (i) whether the statute reflects a secular legislative purpose; (ii) whether the administration of the statute fosters an excessive government entanglement with religion; and (iii) whether the implementation of the statute inhibits the free exercise of religion. Tilton v. Richardson, 403 U.S. 672, 678 (1971).

Where the issue is whether a federal tax statute is constitutional, there is an even greater need to reconcile the tensions among the Taxing Powers, the Establishment Clause, and the Free Exercise Clause. Only this year, the Supreme Court described Congress' Taxing Powers as "virtually without limitation." United States v. Ptasynski, No. 82-1066 (June 6, 1983), Slip. Op. 5. In Tilton v. Richardson, supra, involving whether federal grants to colleges were constitutional, the Court discussed the Free Exercise issue as well as Congress' historic power to provide grants to the secular aspects of religious organizations, and gave special emphasis to the early case of Bradfield v. Roberts, 175 U.S. 291 (1899), approving Federal Government subsidies for a religious hospital.

2. The Supreme Court's four-part test in essence states and defines the requirement that statutes be neutral toward religion in order to comply with the Establishment Clause. Such neutrality also marks the required line between prohibited establishment of religion on one hand, and interference with free exercise of religion on the other hand.

In considering whether S. 528 meets this neutrality test and its various components, it must be emphasized that S. 528 is solely a tax bill, originating in and considered by the Congressional Tax Committees, which would add a new tax credit to the Internal Revenue Code. The credit is similar to that for nursery school expenses paid by working spouses, in that the credit rather than the deduction format is used, in order to harmonize liabilities tax between itemizing and non-itemizing (e.g., standard deduction) taxpayer.[2] The tuition tax credit is thus an exercise of the Taxing Power bestowed on Congress by Article I, § 8, of the Constitution and [illegible]he Sixteenth Amendment.

The Federal Courts have traditionally and consistently treated federal tax statutes as neutral tax mechanisms -- and not as subsidies, grants or penalties -- in order to give a broad scope to the Congressional Taxing Powers. Classification of different persons or groups is at the core of that Power, and the courts have consistently refused to restrict such Powers by adjudging a favorable or unfavorable classification as aid or infringement of liberties protected under the Bill of Rights. The long line of cases reiterating this principle is exemplified by the Court's holding that business expenditures for lobbying are nondeductible, even though nonlobbying business expenses are deductible. The Court treated this classification as having a primary tax purpose and effect, despite the incidental "penalty" on exercise of First Amendment rights. Cammarano v. Commissioner, 358 U.S. 498 (1959).

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[2] Section 44A of the Internal Revenue Code of 1954.

But even if the tax credits provided by S. 528 were viewed as a tax subsidy, the statute would not violate the Establishment Clause. The right to receive tax-exempt status and tax deductible contributions under the Internal Revenue Code is treated as a type of grant or subsidy. Nonetheless, the Supreme Court has very recently reiterated that such benefits do not constitute a prohibited establishment of religion. Regan v. Taxation with Representation of Wash., Nos. 82-2338 and 82-134, Slip. Op. 3-4 and fn.5 (May 23, 1983). Moreover, in Bob Jones University v. United States, No. 81-3, Slip. Op. 29 (May 24, 1983), the Court held that a provision giving the same types of tax subsidies to private schools with racially nondiscriminatory policies, but denying such benefits to segregationist private schools, did not violate the Establishment Clause. The Court reasoned that the purpose of the nondiscrimination requirement was secular and neutral, and its effect was to eliminate the necessity for a detailed examination of the religious beliefs of individual schools.

It is thus apparent that, even if S. 528 were viewed as a form of tax subsidy like tax exemptions and deductible contributions, it would not violate the Establishment Clause. Congress' stated purposes here are totally secular, involving adjustments of tax burdens to promote educational excellence. Any collateral benefit to a particular religion or all religion is mere happenstance. There is no other way to adjust tax burdens of school parents other than to allow the credits to all private school parents.

Indeed, the Establishment Clause position of opponents of S. 528 necessarily denies Congress all power to enact any statute providing tax relief to private school parents as a class. Such a conclusion is inconsistent not only with the opinion in Bob Jones University, supra, but also with the broad interpretation of Congress' tax classification powers as set forth in Taxation with Representation of Wash., supra. There the Court held that Congress had broad power to give charitable tax subsidies to nonlobbying groups, as opposed to those which engaged in substantial lobbying, without interfering with Freedom of Speech guarantees. The Court further held that Congress' Taxing Powers gave it broad discretion to classify veterans organizations different from charitable organizations, and to allow only the former to receive tax deductible contributions for lobbying purposes. The Court reasoned that as long as there is no Congressional intent to infringe the Free Speech rights of the disfavored class, no taxpayer can complain respecting Congress' decision to give a tax subsidy to another group's speech activities. Id., Slip. Op. 9.

The presumption that federal tax statutes constitute an exercise of the Congressional Taxing Power, and not a subsidy of collaterally affected persons or entities, is necessary in order to allow Congress to exercise its Taxing Powers respecting private schools (religious and nonreligious) and religious organizations. If every credit, deduction, or exemption were viewed as a federal grant or subsidy, and every tax as a penalty, the dozens of tax statutes dealing with all or parts of these classes would be in jeopardy under the Religion Clauses and other provisions of the Bill of Rights. For example, the unique FUTA tax exemptions for religious schools, the exclusion extended ministers for parsonage allowances, and special social security tax provisions for religious orders and their members, could become ultra vires Congressional Tax Powers. The Courts have correctly held that Congress' power to accommodate religious organizations under the Taxing Power is totally secular in character, being akin to Congress' broad power to adapt the draft laws to religious beliefs under the War Power.

In reality as well as in theory, federal tax benefits for private school parents primarily benefit education and only incidentally benefit religious and non-religious schools. Unlike in many states, no one religious group is predominant in the Nation as a whole, and the revenues at stake here from tuition tax credits are infinitesimal compared with the federal budget as a whole. Major religious groups have their voices muted by the state representation in the Senate. Enrollment in any denomination's religious schools varies widely from state to state, and the credits in issue here would not constitute a substantial part of the support of any denomination's schools nationwide. In Catholic schools, which have traditionally constituted the largest religious private school systems, enrollment has declined, the percentage of enrollees of other religious persuasions has increased, and the proportion of nonclerical teachers has multiplied. In sum, the "mutual abstention" between government and religion which is the goal of the First Amendment is stronger than ever, and is in no way endangered by the neutral tax credit which S. 528 embodies.

The Courts' "historical acceptance" of the neutrality of federal statutes, together with the current facts bearing upon the actual neutrality of the tax credit in question, are the factors to be considered in adjudging compliance with the Establishment Clause under both Nyquist and Walz. Applying these factors to S. 528, the bill clearly possesses the requisite neutrality and is Constitutional.

II. The Federal Judicial Branch Gives Great Deference to Federal Tax Statutes Because of the Preeminence of the Congressional Taxing Power.

We start with the astonishing but often overlooked fact that, since the adoption of the Sixteenteenth Amendment in 1913, the Supreme Court has never held a federal income tax statute unconstitutional on its face. Indeed, the Court has seldom if ever held a federal income tax statute unconstitutional as applied to specific factual situations.[3]
Federal excise and other non-income tax statutes have rarely

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[3] In Coit v. Green, 404 U.S. 997 (1971), aff'd per curiam (mem.) Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971) (3-judge ct.), the Internal Revenue Service's prior policy of recognizing the charitable status of racially discriminatory schools was held to be contrary to I.R.C. § 501(c)(3). The courts did not explicitly decide the case on Equal Protection grounds.

been held unconstitutional and when they have, it has virtually always been in the context of criminal cases where the pertinent provisions, as applied to specific defendants, conflicted with Fourth and Fifth Amendment guarantees.[4] Only this year, the Court stated that the Constitutional Taxing Power was "virtually without limitation," in upholding exemptions from the Windfall Profits Tax. United States v. Ptasynski, supra.

The reluctance of the Supreme Court to hold unconstitutional federal tax statutes is not a mere historical happenstance. It is not an accident that Congress' "Power to lay and collect Taxes, Duties, Imports and Excises" is the first of the Legislative Branch's powers listed in Article I, § 8. That power has been reaffirmed and fortified by adoption of the Sixteenth Amendment, which gives Congress express "Power to lay and collect taxes on incomes, from whatever source derived."

Indeed, the Constitutional power to "lay" taxes on differing sources also means that not each and every object or source for tax must be taxed. Exemptions alone, even of educational and religious organizations, cannot form the basis for striking down the tax. Pollock v. Farmers Loan and Trust, 157 U.S. 429 (1895).

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[4] For example, United States v. Sanchez, 340 U.S. 42 (1950), upheld the constitutionality of the excise tax on marihuana transfers. In Buie v. United States, 396 U.S. 87 (1969), the Court held that a seller of marihuana could not justify his failure to sell marihuana pursuant to the required government order form on self incrimination grounds. However, in Leary v. United States, 395 U.S. 6 (1969), the Court held that the self-incrimination privilege protected a marihuana buyer from prosecution for failure to obtain an order form and pay the tax.

The Supreme Court has repeatedly recognized that the Taxing Power under Article I of the Constitution is at the core of the National Legislature's authority. Given the history and importance of Congress' Constitutional Taxing Power, the Supreme Court's historical deference to its co-equal Branch is not surprising. The absence of a Congressional Taxing Power in the Articles of Confederation was one of the primary reasons for the adoption of the Constitution. Nor did the early federal Judiciary forget that the Nation's first internal civil uprising was to challenge Congress' imposition of a tax on distilled spirits. Congress itself has never granted the courts jurisdiction to issue injunctions interfering with the enforcement of its tax statutes.[5] Indeed, the Supreme Court has recognized the propriety of such judicial abstention in federal tax matters (Cheatham v. United States, 92 U.S. 85, 89 (1875)):

> If there existed in the courts, State or National, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the power of a hostile judiciary.

In an analogous situation, the Supreme Court has stated its reluctance to interfere with the Treasury Department's issuance of legislative tax regulations authorized by Congressional enactments. As the Court stated (United States v. Correll, 389 U.S. 299, 306-307 (1967):

> * * * we do not sit as a committee of revision to perfect the administration of the tax laws. Congress has delegated

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[5] See Section 7421(a) of the Internal Revenue Code of 1954; 28 U.S.C. § 2201.

> to the Commissioner, not to the courts, the task of prescribing "all needful rules and regulations for the enforcement" of the Internal Revenue Code. 26 U.S.C. § 7805(a). In this area of limitless factual variations, "it is the province of Congress and the Commissioner, not the courts, to make the appropriate adjustments."

The relationship between Congress' Article I Taxing Power and the Sixteenth Amendment, and other Constitutional provisions generally and the Bill of Rights in particular, cannot be boiled down to a simple formula. Each situation must be judged on its own facts, so as to carry out the Framer's intent, and maximize to the greatest extent possible all the Constitutional powers and rights in question.

III. S. 528 Is In Form and Substance A Neutral Tax Mechanism in Furtherance of Congress Taxing Powers.

The thrust of the "principal effect" part of the Establishment Clause test, and indeed of all the other parts of the test, is Government neutrality toward religion. Such neutrality not only sums up the Establishment Clause tests, but also marks the channel between avoidance of religious establishment on one hand, and noninterference with religious exercise on the other hand. See, e.g., Committee for Public Education v. Nyquist, supra, 413 U.S. at 792-793; Gillette v. United States, 401 U.S. 437, 453-454 (1971); Walz v. Tax Commission, 397 U.S. 664, 669, 674, 676 (1970).

It is clear that S. 528 is religiously neutral, because in form and substance it is primarily an application of Congress' Taxing Power. The bill would amend the Internal Revenue Code to add a new tax credit to those now provided in

Sections 44 through 44H. The tax credit would apply to 50 percent of qualified tuition expenses paid by a taxpayer for any qualified dependent. The credit would only apply to tuition paid to a private, non-profit elementary or secondary school. The credit would be limited to $100 per dependent the first year of enactment, and rise to a maximum of $300 per dependent in the third year. Taxpayers with adjusted gross income exceeding $60,000 would not qualify for the credit. Tuition paid by parents to racially discriminatory schools would not be eligible for the credit.

The bill thus addresses income tax classifications and issues which have been a part of the federal income tax statutes from their very earliest years. As explained in other parts of our written and oral statement, the Internal Revenue Code has historically contained many provisions which have established various tax, deduction, and exemption classifications applicable to private schools. Some of these classifications apply to all schools, some only to private or to public schools, and some solely to religious schools. Over the years, the relative tax burdens of religious schools, or private schools and their financial supporters, have ebbed and flowed with other changes in the tax law. S. 528 is merely a continuation of this adjusting process,[6] aimed at providing limited tax relief to parents of dependent children who attend private schools and whose income tax liability merits a modest downward adjustment. The Congress, through lengthy hearings and deliberations, perceived these persons are in need because of other changes in the Code which have increased their direct and indirect federal tax burden.

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[6] In one bill or another, federal tax credits for private school parents have been seriously considered for more than ten years.

The credit for school expenses provided by S. 528 would be quite similar to the credit for the expenses of nursery school currently allowed working spouses by Section 44A of the Internal Revenue Code. Originally, this provision took the form of deduction, but it was changed to a credit in 1976 to allow persons using the standard deduction (non-itemizers) to benefit from it. S. Rep. No. 94-938, 94th Cong., 2d Sess. 132 (1976-3 Cum. Bull. (Vol. 3) 49, 170).

As a matter of tax theory, the tax credit for private school tuition here should be treated as such a neutral, income defining mechanism. There are many factors which may or should be taken into account in adjusting taxable income for various educational items. State and federal governments relieve parents of their legal obligation to provide education to their children to the extent that government provides free public education. Arguably, such relief from a legal obligation could logically be taxed as gross income to parents of public school students (cf. Commissioner v. Tufts, 51 U.S Law Week 4518 (May 2, 1983; U.S. Sup. Ct.)), although Congress and the Treasury have never interpreted Section 61 so broadly. Parents of private school pupils, however, pay tuition with after-tax dollars. Parents of public school students can deduct virtually the entire cost of public schools through the deduction for real estate taxes paid on their homes, while parents of private school students pay those same taxes yet receive no relief for their tuition costs.[7] The tax credit is merely one means of adjusting these inequalities for all taxpayers -- including those who do not itemize deductions -- to arrive at a fair and equitable income tax liability. See Note, "Income Tax Deductions and Credits for Nonpublic Education: Toward a Fair Definition of Net Income," 16 Harv. J. Legis. 90 (1979). The need for such an adjusting mechanism is particularly keen in light of the extra federal tax burdens which changes in the Code and in private school financing have imposed on private schools and parents of private school pupils over the past 10-15 years, as explained in other parts of our written statement.

IV. The Federal Courts Treat Income Tax Statutes Such as S. 528 as Neutral Tax Mechanisms, Not as Subsidies, Grants or Penalties, in Adjudging Their Conformity to the Bill of Rights.

The Supreme Court has consistently indicated that it is fully cognizant of the preeminent importance of Congress' Taxing Powers, including the practical classifications and accommodations which are necessary in legislating a complex legal code to exact revenues from over 100 million taxpaying individuals and entities. It has accordingly formulated a number of interpretative rules to ensure that Congress has maximum leeway in enacting tax classifications. Under these rules, tax statutes are treated as neutral revenue measures, which neither subsidize nor penalize the affected persons, entities, or activities.

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[7] Indeed, parents of private school children are doubly burdened, since IRS presumes their contributions to private schools are disguised tuition to the extent of the "value" of their child's education. Rev. Rul. 79-99, 1979-1 Cum. Bull. 108. IRS has not published a similar rule for parents of public school children.

For example, in the Supreme Court's first consideration of the 1913 income tax act, the Supreme Court upheld the constitutionality of the exemption of religious and other charitable organizations, Brushaber v. Union Pacific Railway, 240 U.S. 1 (1916), following its earlier, like conclusion in Pollock v. Farmers Loan and Trust Co., supra. The Court rejected the contention that this and other tax classifications unconstitutionally favored the exempted organizations, in contravention of the rights of other taxpayers under the Due Process Clause of the Fifth Amendment (id. at 24, 25-26):

> it is * * * well settled that [the due process clause] is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, * * * the Constitution does not conflict with itself by conferring upon one hand a taxing power and taking the same power away on the other hand by the limitations of the due process clause.
>
> *　　　　*　　　　*
>
> * * * comprehensively surveying all the contentions relied upon, * * * we cannot escape the conclusion that they all rest upon the mistaken theory that although there be differences between the subjects taxed, to differently tax them transcends

> the limit of taxation and amounts to a want of due process * * * 8/

The same rationale was followed by the Court in upholding the constitutionality of exemptions and exclusions from the Social Security Act of 1935, c. 531, 49 Stat. 620 -- including the exemption for charitable and religious organizations. Steward Machine Co. v. Davis, 301 U.S. 548, 583-584 (1936). The Court held that Congress was subject to "restraints less narrow and confining" than the states (id. at 584), and concluded that exemptions and deductions for different classes "are not confined to a formula of rigid uniformity in framing measures of taxation."

There is no novelty in the current problem of reconciling the Taxing Powers with the Religion Clauses of the Constituion. The Supreme Court on numerous occasions faced a similar problem several years ago, in reconciling the Taxing Powers

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8/ Earlier in 1910, in upholding the constitutionality of the excise tax on corporate income, the Court had stated (Flint v. Stone Tracy Co., 220 U.S. 107, 173):

> As to the objections that certain organizations, labor, agricultural and horticultural, fraternal and benevolent societies, loan and building associations, and those for religious, charitable or educational purposes, are excepted from the operation of the law, we find nothing in them to invalidate the tax. As we have had frequent occasion to say, the decisions of this court from an early date to the present time have emphasized the right of Congress to select the objects of excise taxation, and within this power to tax some and leave others untaxed, must be included the right to make exemptions such as are found in this act.
> (Emphasis added.)

with the powers reserved to the States under the Tenth Amendment. Justice Frankfurter eloquently described that dilemma in words that have application here (United States v. Kahriger, 345 U.S. 22, 38 (1953) (dissenting op.)):

> Concededly the constitutional questions presented by such legislation are difficult. On the one hand, courts should scrupulously abstain from hobbling congressional choice of policies, particularly when the vast reach of the taxing power is concerned. On the other hand, to allow what otherwise is excluded from congressional authority to be brought within it by casting legislation in the form of a revenue measure could, as so significantly expounded in the Child Labor Tax Case, supra, offer an easy way for the legislative imagination to control "any one of the great number of subjects of public interest, jurisdiction of which the States have never parted with . . . ." Issues of such gravity affecting the balance of powers within our federal system are not susceptible of comprehensive statement by smooth formulas such as that a tax is nonetheless a tax although it discourages the activities taxed, or that a tax may be imposed although it may effect ulterior ends. No such phrase, however fine and well-worn, enables one to decide the concrete case. 9/

9/ Even with respect to federal grants to religious schools, the Supreme Court has cautioned (Tilton v. Richardson, supra, note 1, at 677-678):

> Every analysis must begin with the candid acknowledgement that there is no single constitutional caliper that can be used to measure the precise degree to which these three factors are present or absent. Instead, our analysis in this area must begin with a consideration of the cumulative criteria developed over many years and applying to a wide range of governmental action challenged as violative of the Establishment Clause.

(Footnote continued on page 18).

In Steward Machine, supra, the claim was that the statute's allowance of a 90 percent state tax credit against the federal unemployment tax was too generous a subsidy, and in effect "coerced" the states to enact a state unemployment tax. The Court rejected such a restriction on the federal tax power, concluding that a credit could not be declared unconstitutional merely because the states would find it difficult not to avail themselves of it.[10]

In another line of cases, the Court also repeatedly rejected claims that the federal tax power was limited to enacting statutes primarily designed to raise revenue, and that regulatory tax statutes were an unconstitutional interference with the powers of the states. The Court has consistently held that a federal tax statute "may not be

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(Footnote continued from page 17).

> There are always risks in treating criteria discussed by the Court from time to time as "tests" in any limiting sense of that term. Constitutional adjudication does not lend itself to the absolutes of the physical sciences or mathematics. The standards should rather be viewed as guidelines with which to identify instances in which the objective of the Religion Clauses have been impaired. And, as we have noted in Lemon v. Kurtzman and Earley v. DiCenso, * * *, candor compels the acknowledgement that we can only dimly perceive the boundaries of permissible government activity in this sensitive area of constitutional adjudication.

[10] In Florida v. Mellon, 273 U.S. 12 (1927), the Court similarly upheld the Federal Government's large estate tax credit for state inheritance taxes, rejecting the notion that such a credit was prohibited because it gave undue incentive for states to enact inheritance taxes.

declared unconstitutional because its effect may be to accomplish another purpose as well as the raising of revenue. If the legislation is within the taxing authority of Congress -- that is sufficient to sustain it." United States v. Doremus, 249 U.S. 86, 94 (1919); In re Kollock, 165 U.S. 526, 536 (1897). Thus the Court has upheld Congress' power to enact a federal statute requiring persons dealing in narcotics to register and pay a tax (United States v. Doremus, supra) and a federal tax requiring the registration and payment of a tax respecting certain firearms (Sonzinsky v. United States, 300 U.S. 506 (1937)). Indeed the Court has overruled a series of cases holding that a federal tax statute could be overturned on the ground that it was not designed to raise revenue, but was merely a penalty in the guise of a tax. United States v. Sanchez, supra, at 42, 44-45; Bob Jones University v. Simon, 416 U.S. 725, 741, fn.12 (1974).

Another corollary principle often expressed by the courts regarding federal tax laws is that Congress has broad power and discretion in making various kinds of classifications necessary in a tax code. The fact that a classification affects fundamental liberties under the Bill of Rights does not result in unconstitutionality, absent unusual circumstances. That is to say, tax classifications need not be neutral with respect to fundamental rights; the group subject to greater tax burdens does not have its rights infringed, merely because its fundamental rights are involved in the classification scheme.

For example, the Court in the first challenge to the modern income tax, *Brushaber* v. *Union Pacific Railway*, *supra*, at 23, held that there was no unconstitutional discrimination in taxing differently married and single people, and "husbands and wives who are living together and those who are not." More recently, the lower courts have unanimously held that the various "marriage penalty" statutes, which imposed higher taxes on certain couples who were married than if the same individuals lived together out of wedlock, did not infringe upon the constitutionally protected right to marry. The various federal courts reasoned that the primary purpose of the statutes was to adjust tax rates for various tax purposes (for example, to allow income splitting for families), and that the resulting extra burden on certain married persons was mainly incidental to that tax purpose.[11]

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[11] *Johnson* v. *United States*, 422 F. Supp. 958, 971-973 (N.D. Ind. 1976), *aff'd per curiam*, on District Court opinion, *sub nom. Barter* v. *United States*, 550 F.2d 1239 (7th Cir. 1977), *cert. denied*, 434 U.S. 1012 (1978). The courts have also repeatedly sustained the constitutionality of the income tax provisions which, in some circumstances, tax single persons at a higher rate than married persons. *E.g.*, *Kellems* v. *Commissioner*, 58 T.C. 556, 558-560 (1972), *aff'd per curiam*, 474 F.2d 1399 (2d Cir. 1973), *cert. denied*, 359 U.S. 925 (1959); *Shinder* v. *Commissioner*, 395 F.2d 222 (9th Cir. 1968); *Faraco* v. *Commissioner*, 261 F.2d 387, 389 (4th Cir. 1958); *Bayless* v. *Commissioner*, 61 T.C. 394, 396 (1973). The Tax Court has followed these decisions and applied the rational basis test in upholding the varying child care deduction standards for persons in different marital situations. *E.g.*, *Black* v. *Commissioner*, 69 T.C. 505, 507-511 (1977); *Keeler* v. *Commissioner*, 70 T.C. 279, 282-284 (1978); *Bryant* v. *Commissioner*, 72 T.C. 757, 763-765 (1979); *accord*, *Cash* v. *Commissioner*, P-H T.C. Memo. para. 77,405 (1977), *aff'd, per curiam* on lower court opinion, 580 F.2d 152 (5th Cir. 1978).

On similar grounds, the Supreme Court has held that an ordinary and necessary business expense may be disallowed as a deduction if spent for lobbying, without infringing Free Speech constitutional guarantees. The Court reasoned that Congress had solid tax reasons for limiting business deductions to nonlobbying expenses, and that withholding the deduction from lobbying activities did not constitute a penalty for a firm whose business required extensive lobbying. Cammarano v. United States, 358 U.S. 498 (1959).

In order to treat tax statutes as constitutionally neutral, and to preclude their being viewed as advancing or inhibiting constitutionally protected rights, the federal courts have treated almost all exemption, credit and deduction statutes as neutral adjustment mechanisms rather than affirmative subsidies. For example, in McGlotten v. Connolly, 338 F. Supp. 448, 458 (D.C.D.C. 1972) (3-judge court), the court held that the tax exemption of social clubs was not a Congressional subsidy, but rather a technical tax decision by Congress that clubs are not independent taxable entities. The result was that the court did not have to determine whether the social club exemption was an unconstitutional subsidy of the racially discriminatory practices of certain private clubs. The exemption was not deemed to be the functional equivalent of a grant or subsidy.

The Supreme Court applied a similar rationale in Commissioner v. Sullivan, 356 U.S. 27 (1958), and Commissioner v. Tellier, 383 U.S. 687 (1966), which hold that the ordinary and necessary business expense deduction is primarily a tax computation mechanism, and should not normally be disallowed if the expense is illegal or used to further an illegal scheme.

It is widely recognized that virtually all of the provisions in the Internal Revenue Code fall into the category of neutral tax mechanisms. This is as it should be. A contrary rule allowing courts to examine the collateral and practical effects of federal tax statutes, and to implement or impede them on the basis of their ultimate effects on public policy, would intolerably restrict Congress' legislative power to tax and enlarge the authority of the Judiciary in this area. See United States v. Ptasynski, supra, at 11-12.

This line of cases is frequently viewed as expressing the fundamental principle that the Government is not entitled to all income to begin with, so that when it gives a credit or exemption or deduction, that item does not automatically become a governmental subsidy. Inherent in any tax code is the necessity for foregoing certain revenues, for various reasons or practicality and tax policy. Adjustment of the Code to adjust tax burdens is treated as ideologically neutral, and is not normally viewed as a subsidy to the taxpayers who may be benefitted. For example, under this principle the Congress may legitimately exempt all labor unions from tax, whether or not a particular union misuses the exemption to violate federal or state laws. The tax exemption is merely reflective of a Congressional determination that a labor union is not a suitable taxable entity, and not an express approval of the powers, programs and activities of labor unions. Marker v. Connolly, 485 F.2d 1003 (D.C. Cir. 1973).

It is accordingly clear that in every conceivable situation the Court has given effect to federal tax statutes in accordance with their tax forms, and has refused to view them broadly in a manner which would raise a conflict with other Federal Constitutional provisions. Under these principles, the proposed federal tax credit to private school parents must be viewed as a neutral tax mechanism solely in exercise of Congress' Taxing Power. The fact that it will collaterally benefit private religious schools is simply not material.[12]

We can safely add the adjective "religious" to Justice Jackson's statement in United States v. Kahriger, 345 U.S. 22, 35 (1953) (concurring op.) that "one cannot formulate a revenue-raising plan that would not have economic and social consequences." Any other approach to federal tax statutes would send the federal courts into endless speculations about the indirect effects of the thousands of tax classifications upon the rights and privileges of the countless classes of persons which are affected.

V. Even If Tuition Tax Credits Were Treated as Tax Subsidies, Like Charitable Tax Benefits, They Do Not Violate The Establishment Clause.

That the Supreme Court would likely view tax statutes like S. 528 as neutral for Establishment Clause purposes is confirmed by the Court's approach to the limited class of tax statutes treated as subsidies. In Regan v. Taxation with Representation of Wash., supra, and Bob Jones University v. United States, supra, the Court recently held that charities' income tax exemptions and eligibility to receive tax deductible contributions, which the Internal Revenue Code allows charities and veterans organizations, "have the same effect as" or "are similar to cash grants." Taxation with Representation of Wash., supra, Slip. Op. 3-4. "[T]he very fact of the exemption or deduction for the donor means that other taxpayers can be said to be indirect and vicarious 'donors.'" Bob Jones University, supra, Slip. Op. 16. Nevertheless, the Court expressly recognized its earlier holding in Walz v. Tax Commission, supra, that such tax subsidies do not violate the Establishment Clause. The Court specifically referred to statements in Walz that such tax exemptions are not prohibited by the Establishment Clause, despite the economic benefit which they provide to churches. Taxation with Representation of Wash., supra, Slip. Op. 4, fn.5, citing Walz v. Tax Commission, supra, at 674-676, 690-691 (Brennan, J., concurring), 699 (Op. of Harlan, J.).

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[12] Recently, the Supreme Court implicitly approved the federal statutes providing special unemployment tax benefits to certain religious schools. St. Martin Lutheran Church v. South Dakota, 451 U.S. 772 (1981).

In the Bob Jones University case, moreover, the Court explicitly rejected the taxpayer-schools' argument that the provisions allowing charitable tax-exemptions and deductibility-of-contributions benefits violated the Establishment Clause. Bob Jones University had argued that Congress had no power to enact a statute providing charitable tax benefits solely to nondiscriminating schools, because the purpose and effect of such a provision was to subsidize persons and religions believing in racial integration, and to exhibit "hostility" toward persons and religions holding segregationist beliefs. The University also contended that an enforcement of the statute required prohibited I.R.S. entanglement in its religious activities.[13]

The Court recognized that the Federal Government could not "'prefer one religion over another'", citing Everson v. Board of Education, 330 U.S. 1 (1947), which allowed school bus transportation for parochial school pupils. Bob Jones University v. United States, supra, Slip. Op. 29, fn.30. The Court refused to give controlling weight to the preferential effect of the statute, however, reasoning that a tax provision "'does not violate the Establishment Clause merely because it happens to coincide or harmonize with the tenets of some or all religions.'" Citing Gillette v. United States, 401 U.S. 437 (1971), which allowed draft deferment benefits to opponents of war on religious and philosophical grounds, the Court concluded that "The IRS policy at issue here is founded on a 'neutral, secular' basis * * * and does not violate the Establishment Clause." The Court noted that the statute's uniform application to both religious and secular private schools avoids any entanglement problems.

The Bob Jones opinion explicitly refused to consider the collateral effects on religious groups of the tax benefit classifications in determining whether the classifications violate the Establishment Clause. This was so even though the parties made clear to the Court that the major impact of the racial nondiscrimination condition on tax benefits will be to penalize schools whose racial discrimination is an integral part of their supporters' religious beliefs; indeed, it was the massive intrusiveness on religions which would result from a test which would depend on sincerity of religious belief which led the Court to reject that kind of test. *Bob Jones*, *supra*, Slip. Op. 29; see *Brown* v. *Dade Christian Schools, Inc.*, 556 F.2d 310, 324 (5th Cir. 1977) (Goldberg, J., concurring). Nothing in the tuition credit tax classification proposed here suggests that the collateral effects of the classification are any more material, or have greater impact on religions, than the classification upheld in *Bob Jones*.[14]

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[13] Brief for Petitioner, Bob Jones University v. United States, No. 81-3, pp. 33-34.

VI. Tax Classifications Incidentally Benefitting Religions Should Be Upheld for the Same Reasons that Religious Draft Deferments Have Been Approved.

The relationship of the Congressional Taxing Power and the Establishment Clause has been held to be similar to the relationship between the War Power and the Religion Clauses.

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[14] The right to tax exemption and deductibility of contributions was also treated as a government subsidy in *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C. 1970), *aff'd mem. sub nom. Coit* v. *Green*, 404 U.S. 997 (1971). *McGlotten* v. *Connally*, *supra*, treated the exemption of fraternal societies from tax on their private investment income (26 U.S.C. § 501(c)(8)) as a government subsidy. Professor Boris Bittker has severely criticized the *McGlotten* holding. He would apparently limit subsidy treatment to exemptions provided by 26 U.S.C. §§ 170(c)(2) and 501(c)(3), respectively. B. Bittker and K. Kaufman, "Taxes and Civil Rights: 'Constitutionalizing' the Internal Revenue Code," 82 *Yale L.J.* (1972).

The Court of Appeals' opinion[15] in the Bob Jones University case held that the charitable tax provision did not unconstitutionally subsidize nondiscriminatory private schools, on the grounds that the secular purposes of the charitable exemption and deduction statutes were "unassailable;" that "certain governmental interests are so compelling that conflicting religious practices must yield;" and that "the principle of neutrality embodied in the Establishment Clause does not prevent government from enforcing its most fundamental constitutional and societal values." In so holding, the court relied equally on Walz v. Tax Commission, supra, as well as on the opinion in Gillette v. United States, 401 U.S. 437 (1971). The latter case holds that the Government may grant draft exemption solely to persons whose religious or philosophical beliefs object to all wars, despite the fact that such a classification may deny such exemption to members of religious or other groups whose beliefs are of a different character.

In Gillette, the Court set forth a rationale similar to that in Walz, concluding that Congress may properly provide draft exemptions to religious adherents without contravening the neutrality required by the Establishment Clause. The Court noted that conscientious objector exemptions had been present since the earliest days of the draft and had always been grounded on individual belief rather than sectarian affiliation; that in an early case the Court itself had summarily held such exemptions proper under the First Amendment;[16] that some exemption was justified on pragmatic grounds; that Congress had considerable latitude in fashioning a practicable classification; and that such an exemption promoted Free Exercise Rights. Id., 401 U.S. at 452, 453-460. Specifically referring to the "Nation['s] * * * enormous heterogeneity in respect of political views, moral codes, and religious pursuasions," the Court held that the burden was on the complainant "to show the absence of a neutral, secular basis for the lines government has drawn." The Court concluded that Congress' classification did not establish religion any more than any other exemption classification scheme that could be devised.

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[15] 639 F.2d 147 (4th Cir. 1981).

The Supreme Court in Bob Jones expressly relied on the Gillette case in holding that classifying schools on the basis of their racial policies did not violate the Establishment Clause,[17] even though the effect of the classification was to favor certain religions and disfavor others. In other words, Bob Jones teaches that, just as Congress, in furtherance of its War Power, may establish draft exemption classifications even though they incidentally benefit adherents of certain religions, so also may Congress, in furtherance of its Taxing Powers, establish tax benefit classifications which incidentally reward or harm certain religious groups.

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[16] The Court cited the Selective Draft Law Cases, 245 U.S. 366, 389-390 (1918).

[17] Bob Jones University v. United States, supra, Slip. Op. 29, fn.30.

It is thus apparent that it would constitute a radical departure from Supreme Court precedent for the Court to hold unconstitutional S. 528, one of many tax provisions dealing with the tax burdens of schools and their supporters, on the basis of a strained analysis magnifying the purported benefit to religion of this one provision. We have described in another part of this statement more than twenty federal tax provisions dealing with private educational organizations, which implicitly benefit religious schools. In addition, approximately a dozen other provisions in the Internal Revenue Code involve religious organizations or individuals of other kinds, and their employees and supporters. While no detailed analysis has been done, we believe that at least half of these statutes provide benefits to persons and organizations on the basis of their religious status. Indeed, we submit that it would be virtually impossible to administer the Code as currently structured without special provisions dealing with religious organizations. Such classifications would become impossible to draft if, wherever some direct or indirect monetary benefit to a religious group resulted, they were viewed as a prohibited establishment of religion rather than as a neutral tax computation mechanism.

VII. *Nyquist* Requires that the Traditional, Settled Neutrality of Federal Tax Statutes Be Given Effect for Establishment Clause Purposes.

The tax cases above, which describe most federal tax statutes as primarily designed to make computational adjustments, and only incidentally to promote other governmental purposes, are significant for Establishment Clause purposes. The Nyquist opinion reiterates the rule that "an indirect and incidental effect beneficial to religious institutions has never been though a sufficient defect to warrant the invalidation of * * * law." Committee for Public Education v. Nyquist, supra, at 771, 775.

Since federal tax statutes enjoy a presumption of neutrality, the second part of the Nyquist test, which prohibits a primary purpose to advance religion, must be applied. The Nyquist opinion demands that such traditional neutrality be taken into account in applying the "primary effect" component to a tax statute. The Court there emphasized the fact that the New York tax benefit statute in issue had no "historical precedent", unlike the charitable tax exemption and deduction statutes upheld in Walz v. Tax Commission, supra. Cautioning that "historical acceptance" alone would not satisfy the Establishment Clause, the Court stated that such a factor could indeed reflect that the supposed "'aid' was a product not of any purpose to support or to subsidize, but of a fiscal relationship designed to minimize involvement and entanglement between Church and State." Nyquist, supra, 413 U.S. at 792-793. The Supreme Court sharply contrasted historical tax benefits for religious groups, like those accepted in Walz, with the comprehensive package of grants in state aid and tax benefits for religious schools present in Nyquist.

VII. In Fact as Well as in Theory, S. 528 Has Far More Neutral Elements Than the State Tuition Credit Statutes Disapproved by the Courts.

This presumption of neutrality to which S. 528 is entitled under tax theory is plainly reflected in the actual neutral effects of the federal S. 528 here, as contrasted with the effects of the New York state statutes involved in Nyquist, the state tuition tax credit statutes overturned in subsequent lower court decisions disallowing tuition tax credits in Ohio[18] and New Jersey,[19] and even the tax credit statute sustained in Minnesota.[20] In those states, as is usually the case, education represented the largest budget expenditure. In the federal budget, however, education is a relatively minor item, constituting less than 5 percent of the budget.

In the three overturned statutes, moreover, the tax credits were part of comprehensive direct and indirect assistance packages for private schools, which would have constituted a substantial part of the support of the recipient churches. The Catholic Church was particularly predominant in these states, and would have received a substantial part of its educational revenues directly and indirectly from the state programs. By contrast, at the federal level, the credits involved in S. 528 are not a part of a total package of aid to religious groups. Viewed nationally, diverse religious groups, no one of which claims even 25 percent of the population as adherents, are scattered over the country.[21]

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[18] Kosydar v. Wolman, 353 F. Supp. 744 (S.D. Ohio 1972), aff'd mem. sub nom. Grit v. Wolman, 413 U.S. 901 (1973).

[19] Public Funds for Public Schools of N.J. v. Byrne, 590 F.2d 514 (3d Cir. 1979), aff'd mem., 442 U.S. 907 (1979).

[20] Mueller v. Allen, 676 F.2d 1195, 1202-1206 (8th Cir. 1982), pet. for cert. granted, Oct. 4, 1982.

Even within the Roman Catholic Church, the importance of Church schools varies in various geographic areas of the Nation, and approximately two-thirds of Catholic children in the country as a whole attend public schools. The political impact of the large Catholic population is muted by the

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[21] The opinions of the courts in the various tuition tax credit cases do not furnish statistics as to Catholic predominance which can be meaningfully compared with each other and the Nation as a whole. The statistics cited by Savitt, at 236, fn.161, compare "apples and oranges."

Readily comparable statistics by state exist for 1980. These statistics show that, nationwide, religious school students constituted a smaller percentage of all private school students, and Catholic school students constituted a smaller percentage of private school students, than in New York, New Jersey, or Ohio. Even in Minnesota, whose tax deduction statute was approved by the Eighth Circuit, religious schools and Catholic schools constituted greater proportions of all students than in the Nation as a whole:

	Total elementary and secondary school students	Total all private school students	Percentage of all students	Total all religious school students	Percentage of all students	Percentage of all private school students	Total all Catholic school students	Percentage of all students	Percentage of all private school students	Percentage of all religious school students
U.S. (50 states)	40,984,093	[illegible]	12.3	4,226,491	10.3	84.0	3,190,887	7.7	63.5	75.5
N.Y.	2,871,094	583,997	20.3	512,951	17.9	87.8	429,241	14.9	73.5	83.7
N.J.	1,246,008	233,585	18.7	209,916	16.8	89.9	193,287	15.5	82.7	92.1
OHIO	1,937,381	268,795	13.7	254,501	13.0	94.7	228,326	11.7	84.9	89.7
MINN.	754,318	90,557	12.0	85,016	11.3	93.8	64,909	8.6	71.6	76.3

Source: National Center for Education Statistics, Digest of Education Statistics 1982, Table 40.

Moreover, in at least eleven states, nonreligious private school students constituted 25 percent or more of private school enrollment. In eighteen states, more than 50 percent of all private school enrollment is in non-Catholic schools. Ibid.

representation-by-state system in the Senate, which tends to increase the voting power of Western and Southern states with proportionately smaller Catholic populations.

In sum, at the federal level diversity of interest groups is so large, and the demands on the budget are so diverse, that any single religion, or group of religions, will find it impossible to use the federal tax system as a vehicle for achieving federal support of religion. Cf. Roemer v. Maryland Public Works Bd., 426 U.S. 736, 763 (1976); Wolman v. Walter, 433 U.S. 229, 263 (1977) (Powell, J., concurring and dissenting).

The core of the Establishment Clause has been said to be "mutual abstention" by church and governmental officials from interference with each other's domains. Freund, "Public Aid to Parochial Schools," 82 Harv. L.Rev. 1680, 1684 (1969). Federal tax credits to private school parents for tuition clearly do not endanger that goal at the federal level, any more than contribution deductibility for parents and other supporters of churches and church schools. Decades of experience with federal tax exemption provisions respecting religious organizations have not caused any untoward divisiveness or interference between churches and the government.

Moreover, in considering whether tuition tax credits have the primary effect of advancing religion, one must take into account the enormous changes in private education in the decade since the decision in Nyquist. In that case, Roman Catholic schools comprised 69 percent of all elementary and secondary schools in New York schools.[22] Today, Catholic schools comprise 46 percent of all private elementary and secondary schools nationwide,[23] and the proportion steadily decreases.[24]

Moreover, the enrollment and staff of the Roman Catholic schools has changed dramatically. In 1969-1970, only 2.7 percent of Catholic school students were non-Catholic, while by 1982-1983 that percentage had risen to 10.7 percent.[25] Approximately 20.4 percent of enrollment consists of minotiry children,[26] most of whom are non-Catholic. Today the motivation of parents in sending their children to religious schools is more likely to center around obtaining a sound and structured secular education, as contrasted with the receipt of religious instruction.[27] Indeed, it is largely the rise in the proportion of nonclerical teachers, and the attendant increase in salary and tax burdens,[28] which caused a precipitous decline in enrollment in Catholic schools from 1965 to the present.[29]

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[22] *Nyquist*, *supra*, at 768, fn.23.

[23] *Digest of Education Statistics-1982*, *supra*, at 48.

[24] National Catholic Education Association, *United States and Secondary Schools 1982-1983*, at 6.

[25] *Id.*, Table 16.

[26] *Id.*, at 15-16.

[27] *Id.*, at 15,17; Catholic League for Religion and Civil Rights, *Inner City Private Education-A Study*, 9-13 (1982).

[28] Members of religious orders may be exempt under FICA and self-employment taxes. I.R.C. §§ 3121(b)(8), 1402(e). Such taxes must be paid respecting lay teachers in religious schools, however.

In non-Catholic religious schools also, primary and secondary education is generally following the historical pattern of religious colleges and universities. Enrollment is more likely to be religiously heterogeneous or unaffiliated, and school purposes are increasingly centered on educational excellence rather than religious orthodoxy. These factors are important because they decrease the chance that tax assistance for private school parents will primarily benefit religion rather than education. _Cf._ _Tilton_ v. _Richardson_, 403 U.S. 672, 686-687 (1971).

We do not contend that federal tax statutes are immune from judicial review for compliance with the Establishment Clause. It is always possible that religious sectarianism could become a moving force in Congress, resulting in statutory tax benefits whose purpose was more religious advantage than fiscal integrity, equity and practicality. However, a critical look at the economic and educational conditions which give rise to the tax credit here, and the practical effects of that credit, plainly reveals that such advancement of religion is not its primary or even substantial effect.

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[29] In 1964, Catholic elementary and secondary schools enrolled 4,533,771 students. In 1981, enrollment had declined to 2,269,000. _Digest of Education Statistics_ 1982, _supra_, Table 42.

Senator **Boren**. Again, I want to apologize for missing the testimony.

I want to say I do see there are great variations in this country, and I understand the kind of problems, Sister, when you were talking about not being able to continue to subsidize the existence of schools which in many cases are very broad-based schools with a very different—a good cross-section makeup of the community that you are serving, in terms of racial makeup, economic makeup, and the rest. I understand that, and I sympathize with that problem. I wish I could figure a way of addressing that problem without perhaps in other regions of the country creating problems where you begin to leave only the most severe problems and lower-income people in the public schools that I'm not sure will be addressed by the private sector in those areas.

Sister **Renee**. Senator Boren, it seems to me, though, that to a large extent you are describing the status quo, and I think what we are trying to do is to provide some new way of looking at the whole educational picture that is really going to be good for education.

Sometimes I get the impression that we are not talking about education or what is good for education and what is good for children; it seems that we are talking more about control of education. And I think the emphasis must definitely be on what is good for education, what is good for the children of this country. I don't think we should lose sight of that when we get involved in all of the rest of this.

Senator **Boren**. I agree with you on that point. I think that is extremely important, and I appreciate the comments that have been made.

I guess it just boils down to what some of us think is the very important contribution to a sense of community in the country that public education provides. And maybe that flows from our own experience.

Where I grew up we had only one school system, and in that school system were people from all of the various religious groups in the community, of all the racial groups, of all the income groups, and I am very, very thankful that I was in a community that had but one single school which the whole cross-section of the community attended. I think it helped create a sense of community that can't be duplicated where we don't have that. So that's perhaps a bias and a perspective that I start from. I realize that is not the picture everywhere, and we are already far down the track in other directions in other places.

Sister **Renee**. I think in many areas it is just as you say but when you get into the big cities, there is an entirely different situation.

May I say, too, to Senator Moynihan, you brought up before you wanted some kind of statistics to prove that competition really does increase quality. I think there probably is no direct study on that, but I think if you take a list of the States that have large private school enrollments you will find that those are the same States that spend a lot of money on education. And where we don't have this kind of competitive spirit, the States do not seem to spend as much money on public education.

So maybe private education is the catalyst that we need. This is the way we feel about it.

May I also say, too, that I think in areas where you do have private and public schools, that if the parents who send their children to the private schools knew that they would benefit directly from an increase in a school or education tax, I think that they would be much more willing to vote for it than under present conditions.

Let me finally say that we feel most of the education in this country will be public education—it has been in the past, and it will continue to be in the future. And that is fine, because we have many excellent public schools.

We have an excellent public school system in many areas but our point is that no one should be locked into any system without choice. Thank you.

Senator MOYNIHAN. Could I respond, Sister?

Sister RENEE. Yes, please.

Senator MOYNIHAN. I think that what you just said is correct, and I think it can be very readily established, by a very simple kind of research, that levels of per capita expenditure on education are pretty strongly correlated with the proportion of nonpublic school students in those States or jurisdictions.

But that brings you the problem of what researchers call "intervening variables." Some wholly different phenomena account for both the facts of the higher proportion of nonpublic school students and the higher level of per capita expenditure.

Sister RENEE. It could be.

Senator MOYNIHAN. I have a very simple point which I wanted to make this morning, which is that the issue of aid to nongovernment schools is, in my opinion, best defined as a question of social justice and equity. And when the argument is defined in such terms, it is most defensible.

That is why I get alarmed when people come before us with letters from the President telling us that things are in the Constitution which aren't in the Constitution.

Sister RENEE. Well, you know the pursuit of happiness might be included in there. As a schoolteacher I like to presume that my students are happy.

Senator MOYNIHAN. Well, as to the pursuit of happiness, I think you will find it is in the Declaration of Independence.

Sister RENEE. You are right.

Senator MOYNIHAN. When we are talking about education we have got to talk about texts, and we have got to be a little rigorous about them.

The point is, it seems to me, that to make unnecessary claims which in the end will be immensely difficult to establish is to invite yourself to disputes that you needn't have. To impose on the educational system a model of the free enterprise economy, and to assert that market outcomes are superior to nonmarket outcomes, and so forth, is interesting, but it is hard to prove and it may not be relevant. It is certainly not the most supportable argument, in any event.

I have been in the field of educational research for quite some time. I had a principal role in establshing the National Institute of Education, with the hope that we would begin to get some serious, longitudinal, 30- and 40- and 50-year studies. They haven't started yet, but they might still be done.

Statistics prove that it takes 20 years to find out what the impact of a first grade education is on a 25- or 26-year-old person, and we've done in educational research about all you can do with the sort of stochastic recreation of generations by a one-time survey. Frederick Mosteller and I put out a huge thick book on the Coleman study, which was the second largest study of educational achievement ever compiled. Some very able statisticians reproduced grade levels so that it appeared as though one single group was being tracked through 8 or 9 or 10 grades.

In this way, further insight has been possible, although we have now gone as far as we can in this type of research. The next generation of educational research is going to be of two kinds: One effort will be to get some unified theory of cognition. Some people think, for example, that they are able to find patterns of illogic when a student can't do a certain kind of arithmetic. Some mistakes are random, but others are not. The student makes the same mistake every time. These aren't mistakes to the student, but they are in fact mistakes to the exercise.

So, indeed, we are doing a lot. However, these things always take a generation or two longer than you think. Still, a general theory of learning is coming along—at least some people involved think it is.

Another approach involves longitudinal studies. Some of them go back to the thirties already, and more of them should be done. And that's wonderful, but not, in my view, the correct case for a pluralist school system.

If I could very gently suggest the thought that "in the beginning were the public schools" just isn't so. The public schools were a social invention of the first half of the 19th century.

Sister RENEE. In the State of New York.

Senator MOYNIHAN. As you well know. And prior to that, there were only denominational schools. There were none other.

And in a large part of the country, the old Confederacy apart from Louisiana where I think the oldest Catholic school was 1714, there was no public education in the old Confederacy until after the Civil War. So there are different traditions there.

You know, it's a big, complex country made up of chunks of other countries over three centuries of development, and the schools reflect that pattern, different patterns in different parts of the country.

I just think that equity suggests that we should share in this as we once did. And we have forgotten that we once did.

I don't want to bore you, or anything, and this is in no sense a part of the statement, but the proposition that there ought not be public aid to denominational schools was first raised by, of all persons, President Grant. He was thinking of running for a third term. He was ill, and he had no money, and he needed to support his family.

In a speech to the Army of the Tennessee in Des Moines, Iowa, in 1875, he raised this issue. And he proposed that the Constitution be amended to make public aid to denominational schools unconstitutional, there being no question in anybody's mind at that time that it was constitutional, and indeed normal.

Out of that came a generation of the so-called Blaine amendments, named after Senator Blaine of Maine, which were adopted in States and occasionally would be adopted in the Senate and the House, but never at the same time. Thus, it never became an amendment reported out of the Congress.

But that history is important, as are some of the intergroup attitudes of the time, which weren't all we would hope, and they certainly have vanished. But somehow this legacy can carry us on. Is there anything else anyone would like to say? Father? Sir? Gentlemen?

Well, we thank you very much for your testimony.

At this point in the record I would like to introduce the testimony of Harold Isenberg, of the Federation of Catholic Teachers, who was unable to get an opportunity to testify, but would still like his testimony in the record at some point, and I think this is the right point.

[Mr. Harold Isenberg's testimony follows:]

Testimony of

HAROLD J.T. ISENBERG

SUMMARY OF PRINCIPAL POINTS

1. Catholic school teachers support and urge passage of tuition tax credit legislation.

2. The fundamental and constitutional right of parents to educate their children in the school of their choice is being threatened by spiraling educational costs and inflation.

3. Freedom of educational choice does not exist if the only viable educational system open to parents is the public schools.

4. Tax credits would primarily benefit low and middle income families earning between $10,000 and $20,000 annually.

5. Nonpublic schools save the taxpayers' money and often times do a better job of teaching students to read and write.

6. Nonpublic church-related schools perform a dual function and teach secular as well as religious subjects.

7. Catholic schools, which make up 90% of all nonpublic schools, are attracting an increasing number of minority students, and internally and on a percentage basis are less segregated than public schools.

8. Tax credit legislation like previous constitutional forms of indirect aid to nonpublic schools would directly assist parents and/or students in preserving the alternatives of choice.

9. We believe that the U.S. Supreme Court, which has admitted to only "dimly perceiving the boundaries of permissible governmental activity" in the area of nonpublic school assistance, will find tax credits to be constitutional.

10. Tax credits directly aid those who bear the brunt of tuition expense; are simple & inexpensive from an administrative point of view; and are not prohibitive in terms of costs.

11. Tuition Tax Credits will prevent a public school monopoly and insure the fundamental and constitutional rights of nonpublic school parents and their children to viable educational alternatives.

INTRODUCTION

My sincere thanks to the United States Senate Finance Subcommittee on Taxation and Debt Managaement for your courtesy in permitting me to make a presentation today. I am Harold J.T. Isenberg, and I serve as President of the Federation of Catholic Teachers.

My organization was incorporated in 1963 as the Catholic Lay Teachers Group and gained formal recognition and collective bargaining rights in 1969 for the 3,000 parish school teachers employed by the ten county New York Archdiocese. Ours is the only Catholic teacher union in the nation to represent both elementary and secondary school teachers on a diocesan-wide basis. We help educate approximately 136,000 students, many of them our own children.

The Federation of Catholic Teachers has long been active in and concerned with issues of social justice both within and outside of the Catholic Church. This is why we strongly support and encourage the passage of tuition tax credit legislation. Attached to my statement, for your information, is a position paper of the NYS Coalition for Tuition Tax Credits, of which I am a member, and an article by my superintendent.

THE RIGHT OF PARENTS

The fundamental and constitutional right of parents to educate their children in nonpublic schools, affirmed by the United States Supreme Court in Pierce v. the Society of Sisters, is being threatened by spiraling educational costs and inflation. Government has heavily tipped the economic scales in favor of public schools so that nonpublic school parents exercise their right of educational choice only with severe personal sacrifice. Accommodations, such as tuition tax credits, must be enacted in justice in order to secure the educational rights of nonpublic school parents. After all, tax credits are not aid to schools - they assist parents, while preserving the irght of educational freedom of choice. This right, in the instance of parochial schools, also involves the exercise of the right of freedom of religion. Parents should not have to pay twice to exercise these basic rights. Further it is clear that our tax laws do allow relief to taxpayers who shoulder certain burdens. This does not discriminate against others who get no benefit because they do not have the expense.

One cannot dismiss the double taxation involved for nonpublic school parents by saying that those who do not use public beaches, libraries, transportation, etc., also have to pay for these items. The distinction is that we are not talking about a whim or a luxury. We are talking about the fundamental and constitution right of parents to have their children educated in the school of their choice.

In Catholic Education Faces Its Future, Neil G. McCluskey, S.J., made the following observations regarding parental rights and governmental assistance to nonpublic schools:

> "The states have passed compulsory school attendance laws, and to assist parents to comply with this legislation, have established a system of free public schools, but without any provision in them for religious training. To achieve the common good of accessible free education, the states tax all citizens alike to form a common pool for the support of education. As a result the states are able to provide for their school-age children the substantial benefit of free education and certain auxiliary benefits related to schooling. For more and more Catholic families of moderate and small means, this can only take place within the type of school the state itself chooses. The higher taxes rise, the greater the squeeze on the Catholic parent and the less real freedom of choice he has in choosing a school for his child.
>
> "Many Catholic parents judge that in all conscience they must send their children to a Catholic school because they believe that secular education during the child's formative years is best integrated with religious training. Or they may simply prefer this kind of schooling. The Catholic parent looks to the public school not reproachfully but regretfully.
>
> "A family seeking to follow simultaneously the dictates of conscience and the compulsory-education law may not now, for all practical purposes, share in the state's provision for the common welfare. In the practical order, the state has set up what amounts to a religious test. Children in Catholic schools would qualify for free schooling and all related benefits provided by the state for its junior citizens EXCEPT that their parents have placed them in a Catholic school. If public benefits are so administered that citizens must do violence to their consciences in order to

> share in them, then the benefits are discriminatory. Perhaps Catholic parents should look at things differently. Their feeling of frustration, however, is not assuaged by telling them they are 'free' to have their own schools, as they watch increasing subsidies for public schools steadily pricing Catholic-school education out of the market."

THE PROSPECT OF A PUBLIC SCHOOL MONOPOLY

We are not opposed to public schools nor challenging their importance and worth, but we are unalterably opposed to an educational monopoly over our children. The prospect of such a situation would be a disturbing departure from the American tradition of educational pluralism. We cannot have freedom of choice if the only viable educational system open to parents is the public school. No matter how scrupulous or altuistic the monopolist may be, monopoly reduces one's options and therefore the freedom of choice. As C. Albert Koob and Russell Shaw pointed out in S.O.S. for Catholic Schools:

> "The idea of monopoly in education is peculiarly abhorrent. Here the values at stake are of an entirely different and higher order than whether an automobile buyer shall have the option of choosing among the products of one or several automobile manufacturers. They belong to the moral and intellectual order, and in these areas of life the exercise of free choice is pre-eminently important. And it is essential that this possibility not be merely negative. (That is, the absence of coercion) or theoretical: There must, rather, be the possibility of genuine, practical free choice.
>
> So far as education is concerned, this means that Americans should have both the right and the opportunity to choose from among diocese schools and school systems and that non-public schools must make up more than a 'token' system, but must be numerous enough to accommodate parents and students who choose this kind of school."

Traditionally the American school system is comprised of both public and nonpublic schools. The danger today is that the nonpublic school will disappear as a realistic option for families of average income. The vast majority of nonpublic school children, 3.7 million of 5 million attend schools in our nation's large metropolitan areas. Of this number, 62.7% come from families with incomes of under $25,000. In the inner city, 72% of the children come from households earning under $15,000 a year. These are not the wealthy. Tax credits for these parents are not only a matter of fairness, they are an absolute necessity.

It is true, and a recent National Catholic Educational Association study verifies the fact, that enrollment in Catholic elementary and secondary schools throughout the country has remained relatively constant over the past five years. However, it should be remembered that between 1965 and 1976 enrollment in these schools decreased by 27% with nonpublic schools closing at about the rate of one every school day. It is to prevent another sharp decline that tax credits are needed. As Edward Anthony of the United States Catholic Conference has said, "let there be no mistake about it, to thousands of parents held within the ever tightening grip of poverty, or those brought perilously close to it by an errant American economy, the potential loss of (educational) freedom of choice is real."

Our children and their parents need to be able to choose and afford the school of their preference. Getting a good education is a long-term process that begins with a child's earliest experiences. The alternatives of choice must be available to all at each step in the educational process to be meaningful. Let us not price our children and their parents out of the college, elementary or secondary school of their choice.

NONPUBLIC SCHOOLS SAVE TAXPAYERS' MONEY

Frequently those who would deny nonpublic school parents some form of help ignore the fact that parochial and other private schools provide a great service to all the citizens of this nation. We, too, teach children to read and write - often time better than public schools. In the New York Archdiocese, elementary school students consistently score a half year or more beyond the national reading average, while only 50% of their public school counterparts are on grade level.

If, for example, New York parochial schools were not providing an education for some several hundred thousand students, the taxpayers in our state would have to pay significantly more money to the public schools to do it. In the New York City area the per pupil cost of educating a child in a Catholic school is $650 per year on the elementary level, and $1,350 on the secondary level. The public school costs, however, are

$2,775 elementary, $3,236 junior high, and $2,716 in the high schools. Allowing for contributed services supplied to Catholic school students out of the public school budget, and for the difference between school levels, it comes out that the Catholic school child is educated at a cost one-quater to one-half the cost for educating ~~the same~~ child in a public school. As long as nonpublic schools are in existence and educate large numbers of children, more money is available per pupil for the public schools - not less. For example, in New York City alone 25% of the students attend nonpublic schools, while the state has the highest public school per pupil expenditure in the country and has experienced a 300% increase in public school funding in the past eight years.

The argument that tax credits would hurt public schools is not valid. Edward Anthony, of the Catholic Conference's Education Department, made the following observations regarding this issue in a recent speech before the American Association of School Administrators:

> "First of all, there is no evidence to support the assertion (that tax credits will mean the demise of the public school system). States which either have, or have experimented with some form of educational tax relief have not experienced a significant loss in public school enrollments. Second, the assertion that the quote-unquote "good" students will leave the public schools also has no basis in fact. If by "good" we mean wealthy or even middle-class students, it is foolish to assume that a minimal tax credit will be any incentive for wealthy parents to move their children. Wealthy parents who wish to send their children to nonpublic schools have already made that choice. Those of you who are familiar with the basic economic principle of 'marginal utility' will understand that the family for whom a $250 tax credit will mean something is the family that must scrimp and save to get $250 for tuition for their children. They are the families that will truly benefit."

PAROCHIAL SCHOOLS AND SECULAR EDUCATION

The dual role of nonpublic and especially church-related schools has been eloquently set forth by Associate Supreme Court Justice Bryon White who stated in Board of Education v. Allen:

> "Underlying these cases (previous decisions involving government assistance to non-public education), and underlying also the legislative judgements that have preceded the Court decisions, has been a recognition that private education has played and is playing a significant role in raising national levels, knowledge,

> competence, and experience. Americans care about the quality of the secular education available to their children. They have considered high quality education to be an indispensable ingredient for achieving the kind of nation, and the kind of citizenry that they have desired to create. Considering this attitude, the continued willingness to rely on private school systems, including parochial systems, strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that these schools do an acceptable job of providing secular education to their students. This judgement is further evidence that parochial schools are performing, in addition to their sectarian function, the task of secular education."

Like Justice White, we do not choose to cast our defense of nonpublic schools in the form of an attack on the motives or ideology of those in public education. Both nonpublic and public schools have made and continue to make enormous contributions to American society. Unfortunately, unlike nonpublic schools , public schools are the ones who are monolithically alike when they excluded from their programs religious values and the religious dimension of the human experience. It has been said that value-free education is an impossibility, since values of one kind or another are inevitably conveyed by the educational process. Therefore, in omitting certain areas of human experience from the classroom, public schools implicitly "teach" that these matters are of no great importance or concern and can reasonably be passed over by the student. Unlike other groups in society, our parents have no possibility of obtaining redress for this situation, since a firmly held legal and judicial tradition bars the introduction of specifically religious values or concepts into the public school. In contrast, nonpublic and Catholic schools can point to a "difference where it counts" in attracting parents and children to their schools.

Catholic schools are, also, attracting an increasing number of minority students. The percentage of Black and Hispanic students has grown steadily over the last decade and now, according to the National Catholic Educational Association, accounts for 8.1 % and 8.3% of the total enrollment in all Catholic schools. In the New York Archdiocese 80% of the students in Manhattan and 60% of those in the Bronx are minority students. Our schools are neither elitist or segregationist. Parochial schools are neigborhood schools and reflect the population which they serve. We agree that the current tax credit proposal must maintain its present safeguards to prohibit the claiming of a tax credit for the purpose of sending children to segregationist institutions.

In his report on Public and Private Schools, Dr. James Coleman found, that from a classroom perspective, nonpublic schools are the best integrated. An adjustment in family income, through tax credits, would further increase the number of minority students in the nonpublic sector, not make it [redacted] "elite." He, also, found that Catholic schools more closely resemble the ideal of the "common school" where children from different family backgrounds achieve well.

Other findings of Coleman which are worthy of notice are that between the sophomore and senior years, 24% of the students in public schools drop out, compared to 12% in Catholic schools and 13% in other nonpublic schools. If there were no private schools, segregation patterns in public schools would be about the same, Coleman states. Internally, and on a percentage basis of total enrollment, nonpublic schools are the least segregated. Even when controlling for family background factors, students in Catholic and other nonpublic schools achieve at a higher level than public school students. The private schools have a lot of what seems important to higher scholastic achievement - "greater academic demands and more ordered environment," according to Coleman.

It is obvious to most that the public schools serve not only the children they enroll but the total community through the students who are educated. The same is true of Catholic schools. We not only serve our students directly, but through them we serve the total community. This is the way in which any school carries out its role of service and it seems oddly short-sighted to ignore that fact in the case of nonpublic and church-related schools. Our schools have long been an integral part of the nation's educational establishment. They supplement in many ways the main task of public schools and provide an opportunity for experimentation in educational methods since they are relatively unhampered by bureaucratic red tape or inhibited by political pressures. They give a spur of competition to the public school - not the cut-throat competition of two institutions each trying to out distance the other, but the fruitful competition of self-improvement. Both systems benefit and progress results.

HISTORY OF TAX-AID CONSIDERATION

The idea of indirect assistance to nonpublic institutions is not new. In the past the United States Congress has given aid to both public and nonpublic schools through the Reserve Officer Training Programs, the School Lunch Act of 1949, the Higher Education Facilities Act of 1963, the Higher Education Act of 1965, and the Elementary and Secondary Education Act, also of 1965. Both the School Lunch Act and the Elementary and Secondary Education Act have provided benefits to students in nonpublic and church-related elementary and secondary schools. Tax credit legislation like previous constitutional forms of indirect aid to nonpublic schools would directly assist the parent and/or students in preserving the alternatives of educational choice. We feel that it would meet the constitutional test set forth by the Supreme Court in the Allen case:

> "What are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion."

Again, the Supreme Court reaffirmed the Allen decision in a case involving New York City's tax emption of church property and observed:

> "Making textbooks available to pupils in parochial schools in common with public schools surely was an 'aid' to the sponsoring churches because it relieved those churches of an enormous, aggregate cost for those books. Supplying of costly teaching materials was not seen either as manifesting a legislative pur-

> pose to aid or as having a primary effect of aid controvening the First Amendment. In so doing the Court was heeding both its own prior holdings and our religious tradition . . . With all the risk inherent in programs that bring about administrative relationships between public education bodies and church-sponsored schools, we have been able to chart a course that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion. This is a 'tight rope' and one we have successfully traversed."

While it is true that the Supreme Court has admitted in Tilton v. Richardson to "only dimly perceive the boundaries of permissible government activity in this sensitive area of constitutional adjudication", we feel that tax credits for nonpublic elementary and secondary schools are constitutional, appropriate, and necessary.

Our High Court has seen no difficulty in approving federal grants and loans for nonpublic colleges and universities. It has rejected the notion that simply because the school is religiously affiliated, it is incapable of distinguishing between secular and religious subjects. Associate Justice White in dissenting on the Lemon v. Kurtzman case mused:

> "Surely the notion that college students are more mature and resistant to indoctrination in a makeweight, for the Court in Tilton is careful to note the federal condition of funding and the enforcement mechanism available. If religious teaching in federally financed buildings was permitted, the powers of resistance of college students would in no way save the federal scheme. Nor can I imagine on what basis the Court finds college clerics more reliable in keeping promises than their counterparts in elementary and secondary schools. . ."

ADVANTAGES OF THE TAX-CREDIT CONCEPT

Especially in view of the Supreme Court's decisions, it is imperative that Congress act on the proposed "Tuition Tax Credit Act" in order to maintain for all Americans the basic right we have to better ourselves through education and the right of parents to educate their children in nonpublic schools. We feel that the income tax credit concept has three basic advantages. First and foremost, it gives aid directly to those who bear the brunt of tuition expenses. Every student or parent of a student who is not self-supporting can take advantage of the credit. Second, the tax credit is simple and inexpensive from an administrative point of view. Finally, the cost of the program would not be prohibitive to those concerned with cost. We remind them that the government allows tax advantages to businesses and financially supports the advanced training of their employees while spending billions for write-off for foreign corporations and oil companies. Yet, the parent or student trying to attend the college, elementary, or secondary school of their choice has no such advantage. The current inequitable situation particularly hurts poor and middle income families. It is time we recognize our obligation to insure educational freedom of choice for all Americans by giving them as much assistance as possible.

For all of the reasons set forth above and primarily to prevent a public school monopoly and to insure the fundamental rights of our parents and their children to viable educational alternatives, we urge passage of tuition tax credit legislation.

Again, our thanks for your time and consideration in this very important matter.

New York State
**COALITION FOR
TUITION TAX CREDITS**

ATTACHMENT "A"

Agudath Israel of America
  Rabbi Morris Sherer,
  Executive President
Board of Jewish Education of
Greater New York
  Dr. Alvin I. Schiff,
  Executive President
Catholic School Administrators
Association of New York State
  Bro. Bernard G. Flood, F.M.S.,
  Executive Director
Citizens For Educational Freedom
  Dr. J. Kenneth O'Loane,
  Chairman, New York Chapter
Federation of Catholic Teachers
  Mr. Harold J.T. Isenberg,
  President
Knights of Columbus
  Mr. Harold S. Granger, Jr.,
  New York State Deputy
The Lutheran Church,
Missouri Synod
  Rev. Ronald F. Fink,
  President-Atlantic District
  Mr. Warren H. Helming,
  Executive Director-
  Eastern District
New York State
Catholic Conference
  Mr. J. Alan Davitt,
  Executive Director
New York State Council of
Catholic School Superintendents
  Mr. Joseph W. McTighe,
  Executive Secretary
New York State Federation of
Catholic School Parents
  Mr. William F. Gallagher,
  Executive Director
Northeast Catholic Pastoral
Center for Hispanics, Inc.
  Mr. Mario J. Paredes,
  Executive Director
Parents Acting For Choice
In Education
  Dr. Thomas R. Curran,
  President
Torah Umesorah,
National Society For Hebrew
Day Schools
  Rabbi Bernard Goldenberg,
  National Director

June 22, 1982

Members of the New York State
Congressional Delegation
The Capitol
Washington, D. C. 20515

Honorable Senators and Representatives:

A half-century ago the Supreme Court recognized in a landmark decision the fundamental right of parents to direct the upbringing and education of their children. It is hard to imagine a more essential component of parental freedom than the right to guide a child's intellectual, moral and spiritual development in accord with one's conscience and beliefs. This was the thinking, in any case, that impelled the Pierce decision and caused the Court, nearly 50 years later, to state in Wisconsin v. Yoder that "the primary role of parents in the upbringing of their children is now established beyond debate as an enduring American tradition."

That fundamental liberty, however, is sharply curtailed for many parents and all but extinct for others. Members of the middle class, caught in unrelenting hard times, find nonpublic schools increasingly beyond their means, and families who face the harsher fact of poverty must frequently settle for no choice at all. The tightening economic bind has, in many instances, stifled a basic parental right. No right called "fundamental" should depend on the ability of citizens to afford it. It is time to make the paper right proclaimed in Pierce a right in fact.

Allow us to illustrate the problem with some startling statistics. Nonpublic school enrollment in New York State declined by 300,000 students or 35 percent from Fall, 1965 to Fall, 1980, a rate more than twice the total statewide student drop during the same period. A significant cause of this tragic downtrend is the increased tuition necessitated by soaring costs. Had enrollment in nonpublic schools reflected statewide enrollment trends, approximately 165,000 additional students would be attending nonpublic schools today.

We urge your support of tuition tax credits for families with children in nonpublic elementary and secondary schools. Parents scrimping and saving to support an education they cherish will find in tuition tax credits relief that may make the difference between choice and no choice. And some for whom the right to choose has already lost meaning - often poor and minority parents - would have that right restored. Tax credits would assure fuller participation by the poor in rights routinely accorded the rich.

In a real sense, society is served by preserving alternative schools. Although public schools have been, continue to be, and will continue to be the principal provider of education for American youth - and have done a commendable job - they do not provide for everyone's needs. In a pluralistic society with various responses to life's ultimate questions, it is impossible for one common school system to meet all expectations of what a school should be. Public schools must embody generalized values which may vary with values of a particular group. Nonpublic schools, while educating good citizens and loyal Americans, at the same time preserve pluralism by providing alternatives that address varied needs. The rich and diverse cultural heritage of nonpublic schools is a national treasure worthy of support.

In addition, nonpublic schools represent considerable savings to society and taxpayers. Figures from the State Education Department estimate the cost to taxpayers at $3,785 per public school pupil in New York State for the present academic year. With 580,000 students in the state's nonpublic schools, the dollars saved are substantial. Nationally, nonpublic schools generously provide taxpayers an estimated $11 billion annual tax credit by educating 10 percent of our country's students, a fact often overlooked in the current public debate.

Another nonpublic school contribution to the common good is the counterbalance they provide our near-monopoly public school system. Monopolies, whether private or public, are notoriously insensitive to those they serve. The existence of available alternatives has strengthened both school systems in our nation, with each taking turn as pacesetter, each establishing new standards, each providing lessons in excellency for the other. Make no mistake, the existence of alternative schools and the educational pluralism they provide are facing extinction in many low-income and middle-class neighborhoods. Many nonpublic schools today are struggling for survival. Each school that closes its doors means another option closed for parents and another step towards a single school system for all but the wealthy.

Tuition tax credits are a matter of simple justice. They would provide partial compensation to parents who, in addition to paying their full share of public school support, bear the burden of tuition. Such recompense to citizens shouldering an extra weight and thereby advancing the public good has long been considered sound social policy.

The obligation of the state to develop an educated citizenry need not restrict public funds to the support of one, near-monopoly system. Through public policy that enhances parental choice in education, we advance the right to choose for all parents, those now exercising it and those who someday may; we maintain alternative schools and thereby preserve a rich and excellent educational heritage; we stimulate private investment in education and in so doing educate citizens at considerable savings to society; and we strengthen all schools by allowing alternatives to continue.

A free society should never expect all citizens to merge their values and preferences to a homogeneous whole. In almost every democracy today, a parent's choice of alternative schools is supported with public funds in recognition of the legitimate public purpose those schools serve.

We urge you to support tuition tax credits for parents who choose nonpublic elementary and secondary schools.

Respectfully submitted,

NYS COALITION FOR
TUITION TAX CREDITS

By Joseph W. McTighe
Joseph W. McTighe

JWM/paj

ATTACHMENT "B"

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The Urban Catholic School— A Valuable Part of American Education

James Kearney, F.M.S.

Affording first-hand insights into the urban school environment, this writer provides compelling evidence of the historic and contemporary mission of service of the Catholic schools in American education.

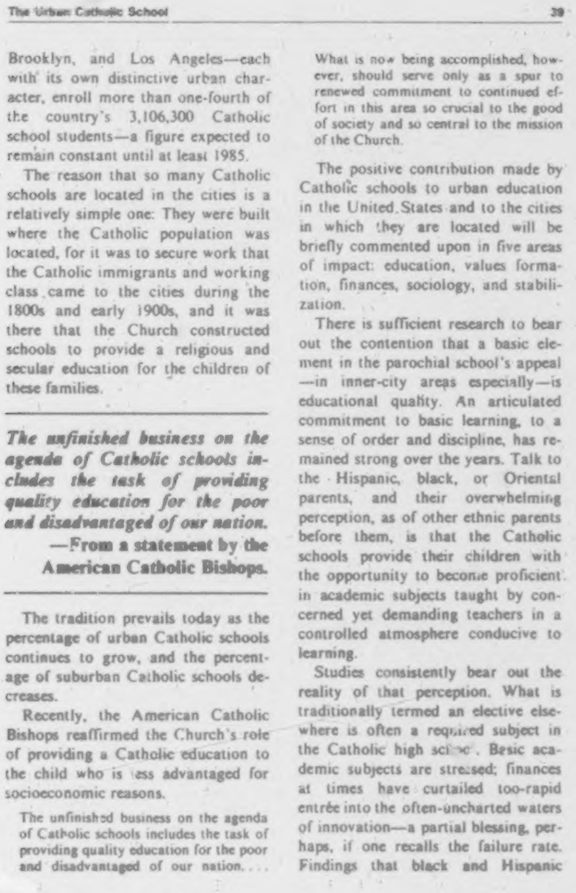
The cities of this country would be poorer indeed without the urban Catholic school. The long and distinguished presence of the Catholic school deserves some overview and current interpretation.

Typical of the urban Catholic school is St. Peter's, which opened in 1800 in lower Manhattan to serve the children of a largely immigrant and working class. During succeeding years the number of such schools grew rapidly in the major cities of the Northeast. Though Catholics constituted less than 1 percent of the population at the time of the Revolution, by 1850 they had become the largest single group of churchgoers in America.

Today nearly 10,000 Catholic schools are located across the country; more than half are located within the boundaries of major cities. Their greatest concentration—better than 55 percent—is in the Northeast and Great Lakes regions. Seventy percent of Catholic school enrollment is in 10 states. New York, Pennsylvania, Illinois, California, and Ohio are the top five, comprising almost half of the national enrollment. Five dioceses—Chicago, Philadelphia, New York,

James Kearney is superintendent of schools, Archdiocese of New York.

ATTACHMENT "B"



Brooklyn, and Los Angeles—each with its own distinctive urban character, enroll more than one-fourth of the country's 3,106,300 Catholic school students—a figure expected to remain constant until at least 1985.

The reason that so many Catholic schools are located in the cities is a relatively simple one: They were built where the Catholic population was located, for it was to secure work that the Catholic immigrants and working class came to the cities during the 1800s and early 1900s, and it was there that the Church constructed schools to provide a religious and secular education for the children of these families.

The unfinished business on the agenda of Catholic schools includes the task of providing quality education for the poor and disadvantaged of our nation.

—From a statement by the American Catholic Bishops.

The tradition prevails today as the percentage of urban Catholic schools continues to grow, and the percentage of suburban Catholic schools decreases.

Recently, the American Catholic Bishops reaffirmed the Church's role of providing a Catholic education to the child who is less advantaged for socioeconomic reasons.

> The unfinished business on the agenda of Catholic schools includes the task of providing quality education for the poor and disadvantaged of our nation. . . . What is now being accomplished, however, should serve only as a spur to renewed commitment to continued effort in this area so crucial to the good of society and so central to the mission of the Church.

The positive contribution made by Catholic schools to urban education in the United States and to the cities in which they are located will be briefly commented upon in five areas of impact: education, values formation, finances, sociology, and stabilization.

There is sufficient research to bear out the contention that a basic element in the parochial school's appeal—in inner-city areas especially—is educational quality. An articulated commitment to basic learning, to a sense of order and discipline, has remained strong over the years. Talk to the Hispanic, black, or Oriental parents, and their overwhelming perception, as of other ethnic parents before them, is that the Catholic schools provide their children with the opportunity to become proficient in academic subjects taught by concerned yet demanding teachers in a controlled atmosphere conducive to learning.

Studies consistently bear out the reality of that perception. What is traditionally termed an elective elsewhere is often a required subject in the Catholic high school. Basic academic subjects are stressed; finances at times have curtailed too-rapid entrée into the often-uncharted waters of innovation—a partial blessing, perhaps, if one recalls the failure rate. Findings that black and Hispanic

ATTACHMENT "B"

youth are succeeding in the academic courses given at Catholic high schools across the country give evidence that these schools were right in resisting the temptation to water down core offerings, introduce other less demanding courses, or let up on their academic mission.

In diocese after diocese, schools with large minority enrollments have standardized test scores that show their students performing at or above grade level in the basic academic subjects. The scores of the Catholic elementary school students in Manhattan, *80 percent of whom are minority*, are typical. In 1980, the seventh grade equivalency reading score was 7.1; in 1981 it was 7.2. For the same years, the seventh grade mathematics equivalency scores were 8.2 and 8.5; the language arts scores were 8.1 and 8.5.

A long-standing commitment to the basics and to an academic rigor has characterized the urban Catholic school. It has given its graduates the basic tools and thereby the confidence to become productive members of the city's workforce and professions. When one considers that every year the percentages of minorities of inner-city students in Catholic schools increase, the impact of these schools on the quality of city life in the future becomes more evident.

Despite the educational achievements of these schools, they do not exist solely to offer an alternative academic education. On the contrary, they have carved out for themselves a precise mission of values education to go hand-in-hand with the other components of the education of the whole person. That mission is implemented primarily in an atmosphere of community and Christianity in an educational setting. While a daily religion lesson and occasional attendance at liturgical services are an important part of this education, the creation of an atmosphere of love and understanding by teacher and student alike is paramount.

In that context, when students are challenged logically, deeply, morally, and spiritually to think about Gospel values and about life's values, and to assess their own lives and the world in which they live, true values education begins to take place. While they are absorbing facts and learning skills, students are being inducted into some set of standards, beliefs, and values in keeping with their dignity as human beings. There is no imprecision about this, no talk about the wrongness of imposing others' values on students. Indeed, teachers are chosen—or rejected—primarily on their own personal commitment to these values and an acceptance of their responsibility to transmit them to the young people they teach.

An August 1978 issue of *Newsweek* spoke of "the slums of the nation's aging and blackening cities" conjuring up norms of existence for their young people such as unemployment, crumbling neighborhoods, fatherless homes, and dependence on crime as a means of survival. The urban Catholic school is making a much-needed contribution to the well-being and the moral fiber of the cities by virtue of its existence and by its philosophy

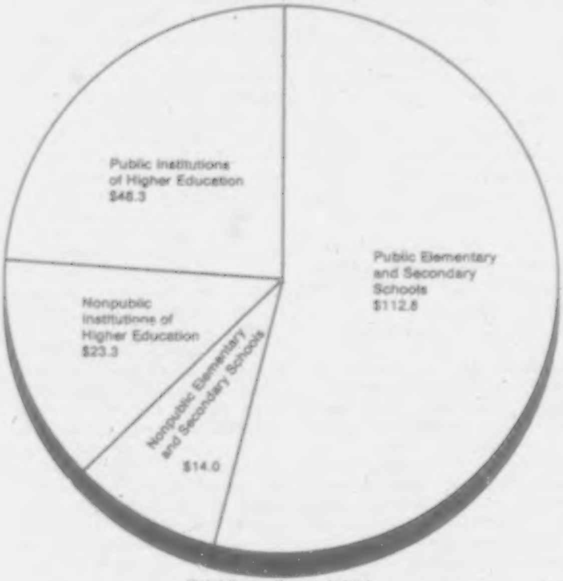
ATTACHMENT "B"

that values and a spirit of community should permeate the educational program. For when the curriculum emphasizes open dialog, willingness to listen to another point of view, altruism, service to others, regard for the nobility of work, peace, and the rejection of bigotry—all components of moral and value-centered education—there is bound to be an overflow from the school into the community.

Another major impact of the urban

Estimated Expenditures of Educational Institutions, by Level of Instruction and by Type of Control: United States, 1981–82

(In Billions)



Total Expenditures: $198.3

SOURCE: Estimates of the National Center for Education Statistics.

ATTACHMENT "B"

Catholic school on cities and municipalities is the financial one. Rising costs and federal cutbacks abound; yet the parochial school, given its urban centeredness, considerably relieves the city of a measure of the financial burden that it would have to carry if Catholic school students were to attend the public school.

The National Center for Educational Statistics estimates that the 1981-82 expenditures for all nonpublic elementary and secondary education will be 14 billion dollars. (See graph.) If this expenditure had to be assumed by the cities and states (the federal government assumes less than 8 percent of the cost of elementary and secondary school education in this country), the cost would be significantly higher, given the fact that public school cost per pupil is sometimes twice as high as that of the nonpublic school cost per pupil.

> ***. . . about 40 percent of the quarter-million black students enrolled in Catholic schools are non-Catholic.***

Catholic education accounts for about two-thirds of all the nonpublic school students in this country. Since the preponderance of the enrollment is in the cities, the reduction in the cost of education accruing to the urban taxpayer is staggering—most estimates topping three-and-a-half billion dollars per year. One telling example: Were the more than 212,000 Catholic school students of New York City enrolled in public schools, the cost to the city and state would surpass six hundred million additional tax dollars per year.

The reality of the situation is that parents, primarily through tuition payments and various fund-raising activities, finance the parochial schools. They and Church authorities who elect to subsidize numerous poor inner-city schools are the financial underpinning of the system. When the history of the twentieth century urban Catholic school is written, one of its brightest chapters should be this conscious and direct commitment of financial resources to the poor—and indirectly to the cities in which these Catholic schools are located.

The large cities of our country are diverse, many-faceted societies. Catholic schools have proved to be remarkably adaptable to sociological conditions. Socialization is evident in the urban Catholic school. One manifestation is ecumenical; about 10 percent of Catholic school students are non-Catholic, and that percentage is higher in the cities where a significant percentage of black students are not Catholic.

Another aspect of socialization in the Catholic school is economic, and another ethnic. Current data readily dispel lingering misconceptions that the Catholic school population is wealthy and white. National Center for Education statistics for 1977 reveal that one-half of the Catholic school parents in this country make less than the nation's median income, and 12 percent of this number are at the lowest level. There are 80 inner-city

ATTACHMENT "B"

Catholic schools in Manhattan and the Bronx in New York City; in 64 of these schools, one-half of the students belong to families at or below the poverty level.

From its origin, the Catholic school in the cities has been a major force in educating the children of immigrants. The children of the Irish, Italian, German, and Polish men and women who came to America during the second half of the nineteenth century received their education largely in church schools. During the decades following their construction, many of these city schools served second and third generations of these immigrants as well as the thousands upon thousands who have through the years come to the United States in search of freedom and opportunity. Today the dominant ethnic minority groups in the large cities are the Hispanics, blacks, and in some sections of the country, Orientals. In many of the major cities minorities comprise significant percentages of the Catholic population—e.g., Washington, D.C. (73 percent), Chicago (41 percent), New Orleans (40 percent), New York City (50 percent).

Nationally, the percentage of black and Hispanic Americans in the urban Catholic school population has nearly doubled at the high school level, and increased 60 percent at the elementary school level during the past 10 years. Last year the number of black students attending Catholic schools was 8.1 percent of the total enrollment, a significant fact when one considers that 1.5 percent of all Catholics in the United States are black, and that about 40 percent of the quarter million black students enrolled in Catholic schools are non-Catholic.

Another facet of the socialization realized in the urban Catholic school setting is the broad spectrum of student ability that prevails. Because of the decrease in school-age population, affecting both public and nonpublic schools, most Catholic schools are in the position of being able to take virtually all applicants.

The majority of Catholic schools are small schools, and consequently are able to generate a genuine community spirit that allows teachers to share with one another and to develop teaching strategies conducive to the successful instruction of students of diverse abilities. The principals of Catholic schools are encouraged to generate inservice programs for curriculum development, and indeed are held accountable for ensuring that the curriculum meets the needs of all students.

As in all schools today, discipline problems reflecting societal and home situations are evident in Catholic schools, but every attempt is made to retain the problem student, to treat each case individually, and to provide counseling measures and remedial programs. Even though a tradition of judiciously administered discipline is still evident, expulsions are comparatively rare.

And while some—certainly not this author—may quarrel with the conclusion of some recent research, that the Catholic schools most closely resemble the ideal of the common

ATTACHMENT "B"

school, that is, they are educating children from different backgrounds and obtaining greater homogeneity of student achievement, one can hardly argue with the conclusion that today's Catholic school is an apt reflection of the neighborhood and locale in which it is located or that it contributes to the socialization synonymous with the democratic and educational ideals of this country.

Finally, the urban Catholic school contributes a significant measure of stability to the neighborhood in which it is located. Traditionally, the parish church and its school have remained in the inner city, and their visible presence are symbols of constancy of purpose in neighborhoods showing the effects of urban blight, deteriorating housing, middle class flight, and crime. Not a few city dwellers remain solely because they are assured of a decent education in the neighborhood parochial school.

> ***. . . the Catholic schools provide their children with the opportunity to become proficient in academic subjects taught by concerned yet demanding teachers in a controlled atmosphere conducive to learning.***

While many such schools date back to the early 1900s, others are of more recent vintage. Whatever date their construction, they are reasonably well maintained and often the center of many community activities. They are truly neighborhood schools with a strong sense of community and the warm atmosphere so necessary for the transmission of values and learning, a milieu conducive to learning and serving, a school climate beneficial to students and communities.

Far from being an isolated institution concerned only with its own needs, the urban Catholic school reaches out to the wider community, cooperating with city government, assuming responsibility and leadership in civic affairs, and providing its students and their parents with motivation and opportunities to learn how to be good neighbors and good citizens.

Community is a concept, to be sure, but more importantly, it is a reality to be lived. As a proponent of this philosophy the Catholic school lends itself tangibly to one of the great needs of the city, the stabilization of neighborhoods.

The Catholic school recognizes parents as the primary educators of children. However, changing times have brought about additional challenges for today's parents. Abuse, neglect, indifference, selfishness, desertion—all are realities, both in society and in the home, that have shattered the quality of contemporary family life. One major antidote is the urban Catholic school's objective of sharing in the responsibility of parents by reflecting the qualities of community that each child ideally ex-

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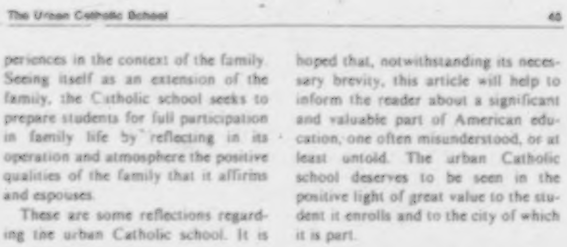

The Urban Catholic School 46

periences in the context of the family. Seeing itself as an extension of the family, the Catholic school seeks to prepare students for full participation in family life by reflecting in its operation and atmosphere the positive qualities of the family that it affirms and espouses.

These are some reflections regarding the urban Catholic school. It is hoped that, notwithstanding its necessary brevity, this article will help to inform the reader about a significant and valuable part of American education, one often misunderstood, or at least untold. The urban Catholic school deserves to be seen in the positive light of great value to the student it enrolls and to the city of which it is part.

Senator MOYNIHAN. And now we hear from our last panel: Mr. Albert Shanker, the president of the American Federation of Teachers; Mr. Bernie Freitag, vice president of the National Education Association; Ms. Lindberg was heard earlier, and so I take it that you are Mr. Michael Casserly of the Council of Great City Schools, a legislative and research associate.

Mr. Shanker can't be present, and Mr. Greg Humphrey is representing him?

Mr. HUMPHREY. Yes.

Senator MOYNIHAN. You are very welcome, and you are first.

Could I ask the young lady who has joined us to give her name?

Ms. LINDBERG. Nancy Lindberg, from Kansas.

Senator MOYNIHAN. Oh, of course. You have already testified, but you are joining the panel. That's very thoughtful of you.

We are ready to start.

STATEMENT OF GREG HUMPHREY, DIRECTOR OF LEGISLATION FOR THE AMERICAN FEDERATION OF TEACHERS, AFL-CIO

Mr. HUMPHREY. Thank you, Mr. Chairman.

I am Greg Humphrey. I am director of legislation for the American Federation of Teachers.

Mr. Shanker was here earlier, but because of a convention of our New York State affiliate, and the unusual length of this hearing he had to leave. Connections to Albany being what they are, he couldn't wait any longer.

I represent the American Federation of Teachers, an organization of more than 580,000 teachers, paraprofessionals, and other school personnel who strongly oppose the enactment of any tuition tax credit bill.

We believe tuition tax credits would cause irreparable harm to our system of free public education, that they would encourage devisive forces in our society, and lead to a system of educational finance that would work to the detriment of the vast majority of American children and the parents.

If the President's tuition tax credit bill becomes law it will represent only the first installment of a massive and open-ended entitlement program of the type that in the past few years the Congress and the President seem to find so objectionable. But more importantly, it will become the vehicle for causing irreparable damage to the public schools.

Three hundred dollars from the Federal Government will in many States quickly be matched, especially in those States that have passed legislation, previously. In a fairly short period of time the demand for tax credits would be extended down to the local level, as it already has been in the District of Columbia. What starts out as a $300 tuition tax credit sponsored by the Government of the United States would in a very short period of time blossom into a complete financing package for private education, that would, we believe, undermine the entire system of school finance that our country has come to rely on.

I would like to say that the proposals that are being made for a tax credit for public education lead me to believe that this possibility is even greater than I would have believed before this hearing. And I would be happy to talk about that later as time permits.

Tuition tax credits would result in an unfair and one-sided competition between private and public education. The competition that would be fostered between public and private education would be patently unequal, since private schools must observe none of the mandates placed on public schools.

The admission policies of private schools for the handicapped, for non-English-speaking children and students with other special needs are a private matter. Children with expensive educational needs rarely make it past the first screening in many private schools, and there is nothing in the law that leads us to believe that there would be any change in this policy.

What would happen is that a creaming process would begin—actually one that already exists would be accelerated—with the tax credit financing, a process by which students without expensive and difficult education problems would find it more and more advantageous and attractive to find their way into private schools, and a financing package to support that activity would blossom.

Another issue that we believe has to be addressed is that of equity. When the question of providing general aid to private education on the basis of $300 per child directly from Federal funds is compared to what has happened to public education programs over the past few years, it is difficult for us to see how the Congress can even consider creating this new form of educational assistance to private schools.

While we believe that there will never be a time when it is justified to pass a tuition tax credit bill, the ongoing thrust of the Reagan administration to turn existing education programs backward and make them even less useful for public schools highlights the fact that a tuition tax credit proposal at this time is even more inequitable than it might be at others.

When the entire package is looked at, we believe that there are many reasons to oppose a tuition tax credit, but one that has not been examined by the Finance Committee is the question of school finance.

If, for example, a tax credit were permitted for public schools, it seems to me that this would be encouragement for the developing of some sort of fee structure among public schools, that either schools or within a school district would be encouraged to claim a tuition for certain services that are rendered, or there would be an attempt to use this tax credit to pay public school tuitions across school district lines.

What you are really starting here is a shift in the financing of a vast and important public service. The results of that shift cannot be foreseen.

Without any question, a $300 tuition tax credit is not the final word on this particular experiment, should it be conducted. You would have, in my mind, started a process that would in a very short period of time, and I mean within 10 years or so, result in changes in our educational finance system that would not serve the 90 percent of the parents and children who currently rely on public education, and you would, I think, with the small leverage of the $300 tuition tax credit, turn the system completely on its ears. The final result would require continued Federal activity in order to undo the damage that we believe would be done.

Thank you very much.

Senator MOYNIHAN. Thank you, Mr. Humphrey.

[The prepared statements of Mr. Albert Shanker and Dorothy Shields follow:]

STATEMENT OF
ALBERT SHANKER, PRESIDENT
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
BEFORE THE U.S. SENATE COMMITTEE ON FINANCE
April 28, 1983

Mr. Chairman and Members of the Committee:

I am Albert Shanker, president of the American Federation of Teachers AFL-CIO. The AFT represents more than 580,000 teachers, paraprofessionals and other educational employees who strongly oppose the enactment of any Tuition Tax Credit bill. Tuition Tax Credits would cause irreparable harm to our system of free public education. They would encourage divisive forces in our society and lead to a system of educational finance that would work to the detriment of the vast majority of American children and their parents.

Tuition Tax Credits will eventually result in a massive expenditure of public funds on behalf of 10% of the school age population whose families are on the whole, better-off economically than the population in general.

No one should be lulled by the fact that the initial credit has been down-sized. If the President's Tuition Tax Credit bill becomes law, it will represent only the first installment of a massive open-ended entitlement program of the type the President otherwise finds so objectionable. It will also become the vehicle for causing irreparable damage to the public schools.

Three hundred dollars from the federal government will be quickly matched by a number of states who have in the past enacted similar legislation. In addition, it would only be a short time before the demand for tax credits was extended to the local level as it already has been in the District of Columbia where a plan to provide a $1200 tuition tax credit was voted on two years ago. In short, a $300 federal tax credit would blossom into a complete financing package for private elementary and secondary education. This method of finance would undermine the financial base for our public school system and radically change our existing system of school finance for the worst. Tuition Tax Credits would finally result in an erosion of support for public schools.

Tuition Tax Credits would create an unfair and one-sided "competition" between private and public education. The "competition" that would be fostered between public and private education would be patently unequal since private schools observe none of the mandates placed on public schools. The admission policies of private schools for the handicapped, non-English speaking or other students with special needs are a private matter. Children with expensive educational or behavioral problems usually never make it past the first screening in most private schools. With tax credits paving the way, a creaming process would begin which would allow private schools to attract those students easiest to serve. The public schools would then have the problem of serving higher and higher concentrations of students with the most difficult and expensive educational and behavioral problems. In the public mind the public schools would increasingly be seen as a dumping ground to be avoided with the aid of tax credits.

Another issue that must be addressed is that of equity. How can our federal government even think of spending $300 per private school child when programs serving children with the greatest economic and educational needs are being slashed and eliminated by the Reagan Administration? ESEA Chapter I, the Education For All Handicapped Children Act, and aid programs for needy college students have all come under the Reagan knife. It is unfair to even consider spending more for each student in private schools than is being spent for children in public schools.

We believe the facts clearly establish that there will never be a time when it is justified to pass a Tuition Tax Credit bill, but the current slashing and elimination of on-going education programs being attempted by the Reagan Administration highlights the unfairness of this proposal. To gouge public education to pay for Tuition Tax Credits is simply too much, we hope, for this Congress to bear. It is interesting to note that after dealing with Tuition Tax Credits the Finance Committee will find it necessary to raise over $30 billion in taxes to meet the revenue targets of the Senate Budget Committee for Fiscal Year 1984. I wonder what taxes will be raised to pay for the additional $1.2 billion in costs needed to pay for this bill when it is fully implemented.

Another simple test that this Tuition Tax Credit bill fails to pass is that of need. In 1981 the Congress passed and the President signed into law the largest tax cut in our Nation's history. More than $750 billion in taxes are projected to be cut through Fiscal Year 1986. In addition, Congress has changed the rules for charitable contributions and will now allow those using the short tax form to make tax deductible gifts to non-public schools. Given the tax changes already made, there is no need to provide additional tax relief to those who use non-public schools.

Non-public school enrollments have been stable recently (some indicators are that they are actually increasing). Clearly, the survival of non-public schools are not at issue now, if in fact they ever were. There is no established need for Tuition Tax Credits to "save private and parochial schools" as some claim.

You should also consider the divisive effects Tuition Tax Credits will have on our society. Tuition Tax Credits will lead to some schools organized on ideological rather than educational principle as well as schools based on race, class and ethnic background. Tuition Tax Credits will foster or support the creation of schools run by extremists. We can expect our tax dollars will be used to pay for schools run by cults such as the Moonies or by political extremists of the right and left who do not seek to maintain a stable domestic society. In providing Tuition Tax Credits to the aforementioned groups, you will damage an institution whose contribution to our country is second to none. Almost all Americans came from somewhere else. The public schools have contributed mightily to the creation of a Nation out of many diverse peoples.

Tuition paid to schools run by the Reverend Jim Jones and the People's Temple would have qualified for a Tuition Tax Credit under the bills pending in Congress. Here was a group that was integrated by race, opposed to discrimination, and identified as a legitimate religion--they had all the surface markings of a legitimate organization. This could have been a group meeting the standards found in the bills before this Committee. It is easy to see how Tuition Tax Credits will finance the expansion of schools run by extremists. It is also necessary to point out that the so-called safeguards in the President's bill amount to little more than smoke and mirrors. If anything it offers even less civil rights protections than other proposals heard by this Committee.

Tuition Tax Credits fail to meet the necessary tests that should be given to any piece of proposed legislation. They will damage a vital productive institution, public education, they will lead to divisions in our society and there is no demonstrated need for the proposed expenditure of the funds. They are also a roll of the dice. Once the public school system is harmed by Tuition Tax Credits, there will be no way to put things back in working order and the educational opportunities of millions of children will be diminished.

We realize that this Committee does not have jurisdiction over education legislation, but you have before you legislation that will have a profound effect on the education of our Nation's children not just a tax relief measure. It should be rejected out-of-hand.

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STATEMENT OF DOROTHY SHIELDS, DIRECTOR, DEPARTMENT OF EDUCATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS BEFORE THE SENATE FINANCE COMMITTEE ON THE "EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983" (S. 528)

April 28, 1983

SUMMARY

We thank you for the opportunity to testify on behalf of the AFL-CIO in opposition to S. 528. The current tuition tax credit bill (S. 528) does not advance education. Combined with already declining enrollments and the cutbacks in both State and Federal support, this bill promises to shortchange public schools even further, thereby diminishing their capacity to fulfill their public purpose.

Supreme Court Justice Brennan defined this public purpose well in the majority opinion he wrote in a recent decision of the court. "...We have recognized the public school as a most vital civic institution for the preservation of a democratic system of government...and as the primary vehicle for transmitting the values on which our society rests.... In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of society."

This two-fold public purpose -- transmitting the values of our society and producing an educated and productive citizenry -- will continue to be the primary purpose of public education in the future. If we are to compete on the world market, we must not only continue to support education, we must commit our resources to improve the quality of education.

If S. 528 was enacted:

- The United States Treasury would lose hundreds of millions of dollars. Another open ended tax expenditure, which is not subject to the legislative process of authorization and appropriation would be created, ultimately forcing reductions in direct educational aid at all levels.

- Tax credits would in many states provide more federal aid per pupil for nonpublic school education than is currently provided for public schools. The Education Commission of the States in 1982 stated that a $300 tax credit would give 32 states more federal aid per pupil for private schools than they would receive for public schools. In 11 of those states the average credit would be more than 50 percent higher than federal public school support. ECS also estimated that a $300 tax credit, even with an income cap, would cost over one billion dollars annually.

("Tuition Tax Credits: Their Impact on the States", October 1982, Education Commission of the States)

- The revenue lost because of S. 528 we believe, would only be the tip of the iceberg. It would not be long before demands to increase credit allowances would increase the drain on the federal treasury many times the initial outlays. This would probably be followed by similar action at the state and local level.

We believe it is an obligation of the federal government to support the nation's public schools and secure the future of public education. Tuition tax credits divert vital funds for financing schools and represent an inequitable and inappropriate use of the tax structure.

We see no reason to abandon the concept of federal aid to education, for both public and private school students, as described in legislation such as the Elementary and Secondary Education Act and Chapter I of the Education Improvement and Consolidation Act. The AFL-CIO believes the existing structure of federal aid which allows participation of nonpublic school students on the same basis as students in public schools is the appropriate way to provide for the special needs for all children. We urge rejection of S. 528 and all other similar tuition tax credit bills.

83-42

STATEMENT OF DOROTHY SHIELDS, DIRECTOR, DEPARTMENT OF EDUCATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS BEFORE THE SENATE FINANCE COMMITTEE ON THE "EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983" (S. 528)

April 28, 1983

We thank you for the opportunity to testify on behalf of the AFL-CIO in opposition to S. 528. This bill would provide a credit equal to 50 percent of private school educational expenses up to a maximum of $100 in the first year, $200 in the second year and $300 per year thereafter.

The working people of America believe now as they believed in the early days of this country that quality public education for their children and for themselves is a key to an improved quality of life. For more than a decade, tuition tax credits have been proposed and rejected by the Congress. The current tuition tax credit bill (S. 528) does not advance education. Combined with already declining enrollments and the cutbacks in both State and Federal support, this bill promises to shortchange public schools even further, thereby diminishing their capacity to fulfill their public purpose.

Supreme Court Justice Brennan defined this public purpose well in the majority opinion he wrote in the recent decision of the court that the children of illegal aliens have the same right to free public education as other children in a school district. Citing earlier Court decisions, Justice Brennan said: "The American people have always regarded education and the acquisition of knowledge as matters of supreme importance.... We have recognized the public school as a most vital civic institution for the preservation of a democratic system of government...and as the primary vehicle for transmitting the values on which our society rests.... In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of society."

This two-fold public purpose -- transmitting the values of our society and producing an educated and productive citizenry -- will continue to be the primary purpose of public education in the future. If we are to compete on the world market, we must not only continue to support education, we must commit our resources to improve the quality of education. Although education in the United States has traditionally been a local concern, in certain areas the federal government has the responsibility to promote national concerns. In science, mathematics, and foreign languages in particular, the federal government has a legitimate interest in improving the quality of instruction in the schools and in preparing teachers to teach in these fields. Without increased federal assistance in these areas, our national priorities cannot be met, and we cannot hope to compete economically with nations who are willing to invest in education.

The AFL-CIO therefore reaffirms its long standing opposition to tuition tax credits. If S. 528 was enacted:

- The United States Treasury would lose hundreds of millions of dollars. Another open ended tax expenditure, which is not subject to the legislative process of authorization and appropriation would be created, ultimately forcing reductions in direct educational aid at all levels.

- Tax credits would in many states provide more federal aid per pupil for nonpublic school education than is currently provided for public schools. The Education Commission of the States in 1982 stated that a $300 tax credit would give 32 states more federal aid per pupil for private schools than they would receive for public schools. In 11 of those states the average credit would be more than 50 percent higher than federal public school support. ECS also estimated that a $300 tax credit, even with an income cap, would cost over one billion dollars annually.

("Tuition Tax Credits: Their Impact on the States", October 1982, Education Commission of the States)

- The revenue lost because of S. 528 we believe, would only be the tip of the iceberg. It would not be long before demands to increase credit allowances would increase the drain on the federal treasury many times the initial outlays. This would probably be followed by similar action at the state and local level.

The American public school has played a major role in sustaining our democratic government -- as much as any other single institution in the history of our nation. Today, we take for granted that public schools will always be there to provide a comprehensive education for all children, regardless of their race, religion, academic ability, physical handicap or the economic status of their parents. We are proud of our egalitarian universal education system. We continually look to public education to solve some of our most urgent social problems.

We believe it is an obligation of the federal government to support the nation's public schools and secure the future of public education. Tuition tax credits divert vital funds for financing schools and represent an inequitable and inappropriate use of the tax structure.

Section 2 of S. 528 states three policy goals: "...to foster educational opportunity, diversity and choice for all Americans." In our judgment tuition tax credits will set up a situation where these three goals compete rather than complement each other.

The Office of the Assistant Secretary for Planning and Evaluation of the Department of HEW issued a report in 1979 that a $500 tax credit would not significantly lower the price of private schools for most families. It would, however, according to the report, offer a significant opportunity for private schools to raise tuition thereby preventing any lowering of actual costs to parents.

In its February 1981 report the Congressional Budget Office reached the same conclusion that schools could use the taxpayers as a conduit by increasing their charges in order to capture a portion or all of the benefit. There is little reason to believe that the $300 maximum tax credit in S. 528 would have a different impact on tuition.

The Reagan Administration has opposed including a refundability provision in this bill. Refundability provisions at least blunt some of the inequities resulting from tax credits. S. 528 thus has a particularly disproportionate adverse affect on the poor and minorities. The 1980 United States Census indicates that 37 percent of Hispanic and 46 percent of Black families with school age children earn $10,000 or less annually and would, therefore, be automatically ineligible for the proposed tax credits even at the $300 tax credit level.

S. 528 bases its proposal for tax credits for private elementary and secondary education on a declaration of policy that "tax relief for nonpublic school tuition expenses is necessary if American families are to continue to have a meaningful choice between public and private education at the elementary and secondary levels." We disagree. The AFL-CIO believes that federal aid to education should not be restructured in order to advantage private schools over the public school system. We believe that federal aid to private schools as was provided in the formula embodied in the Elementary and Secondary Education Act was fair and appropriate.

Under the old ESEA provisions that the AFL-CIO supported, private school students benefited from federal assistance for such things as instructional materials, library resources, guidance and testing programs. During 1981 in New York, for example, more than $21 million in Title I funds, or 8 percent of the state's Title I money, went to private school students. In addition to such federal programs New York private school students were entitled to state funds for transportation, health services and could enroll in State funded occupational and vocational programs. In Worcester, Massachusetts, 21 percent of Title I funds, 26 percent of Title IV-B funds and 17 percent of special educational money went to private school students.

Additionally the three federal programs that serve the largest number of private school students included those for disadvantaged students, to assist schools to buy books and instructional materials and to improve local education practice. Title I, Title IV-B and Title IV-C of the Elementary and Secondary Education Act provided the greatest dollar allocations and served the largest number of nonpublic school children. Private schools also benefited from many other federal programs, including aid for bilingual education, desegregation assistance, gifted and talented students, metric education and others.

The AFL-CIO believes that tuition tax credits are a wide departure from the concept of the federal government's role as spelled out in the Elementary and Secondary Education Act and Chapter I of the Education Improvement and Consolidation Act which target federal aid through specific programs.

There also continue to be questions about the constitutionality of tuition tax credits for students who attend private schools. Since the overwhelming majority of students in nonpublic schools attend church-affiliated institutions, federal dollars through tuition tax credits would in effect be supporting religious education. This raises serious constitutional questions relating to the separation of church and state. Because of the issue several state tuition tax credit proposals have already been held unconstitutional by state and federal courts. The Supreme Court's Nyquist decision finding New york State's tuition tax credit law unconstitutional is clear on this question. Other examples of states whose tuition tax credit laws have been declared unconstitutional include New Jersey, California and Ohio.

Accordingly, we see no reason to abandon the concept of federal aid to education, for both public and private school students, as described in legislation such as the Elementary and Secondary Education Act and Chapter I of the Education Improvement and Consolidation Act. The AFL-CIO believes the existing structure of federal aid which allows participation of nonpublic school students on the same basis as students in public schools is the appropriate way to provide for the special needs for all children. We urge rejection of S. 528 and all other similar tuition tax credit bills.

In 1977, the AFL-CIO in convention adopted a position of opposition to tuition tax credits and in May, 1978, expanded on its position in a statement by the AFL-CIO Executive Council. In 1981, the AFL-CIO Executive Council Report, adopted at the AFL-CIO Convention in November of that year, "firmly rejected such proposals as educational vouchers and tuition tax credits as detrimental to the continued strength and growth of the public school system." Most recently, the AFL-CIO Executive Council at its February 1983 meeting approved a statement on Education in which it rejected tuition tax credits "which drain revenues needed for public education institutions." These statements are attached.

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Statement by the AFL-CIO Executive Council

on

Education

February 28, 1983
Bal Harbour, Fla.

The AFL-CIO rejects the Reagan Administration's education budget proposals because they rest on tax gimmicks, rhetorical fluff and pious platitudes instead of a substantive leadership program to enable the nation's public education system to educate and re-train America's current and future workforce.

The AFL-CIO continues to reject education vouchers, tuition tax credits and education savings accounts which drain revenues needed for public education institutions. The voucher proposal for compensatory education services for the disadvantaged could destroy a successful and effective public school program.

The AFL-CIO opposes cuts that eliminate or reduce student aid programs and so-called self-help grants which further diminish equitable education opportunities, penalize low tuition community colleges and state institutions and demean the dignity of workers' families striving to offer their children the opportunities of higher education. The AFL-CIO considers education to be a right and not a privilege. The Reagan Administration's proposals, by requiring greater payments by individuals, would severely restrict access to higher education for most Americans, especially those in low-income groups.

In the conviction that America's commitment to quality education for all should be broadened and strengthened, rather than reduced, we call on the Congress to reject proposed rescissions in the categorical funding for bilingual education, Indian education and special programs to assist elementary and secondary schools.

The President's budget proposals of the last two years included no money for mathematics and science teaching. While this year's proposal does address the real need to train more teachers in these subjects, a far greater effort is needed to help raise the national level of technical knowledge and training. Vocational education programs being considered for renewal this year are especially important because of the recession and high unemployment. Putting America back to work will often depend on our ability to send America back to school.

Education and training related to job opportunities should be easily and freely available to young people and to adult workers, especially to those who are unemployed. To achieve this goal, the public vocational education system must be adequately funded.

The AFL-CIO calls upon Congress to authorize realistic levels of funding to enable public vocational education to train students in high technology, using modern equipment. To maintain the federal leadership role, Congress should reject Administration efforts to reduce support by consolidating vocational education grants into broader education block grants.

We also urge the Congress to explore new initiatives for the retraining of adult workers through the vocational education system, to provide incentives and support for the training, retention and upgrading of teachers, and to continue and strengthen the requirements for labor representation on local advisory councils.

We recognize that the joint cooperation of labor, management, local government and local education agencies and institutions is essential for the effective operation of vocational programs to meet the needs of workers, their employers and local communities. We urge all AFL-CIO affiliates to support such cooperative efforts in every possible way.

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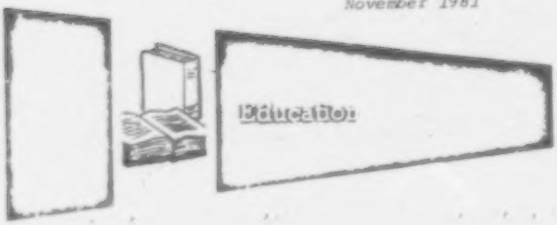
FROM: Report of the AFL-CIO
Executive Council
November 1981



Education

Since the AFL-CIO last met in convention the goals for achieving quality education for workers and their families have received an unprecedented challenge from the Reagan Administration. At a time when education in America was beginning to reflect the benefits of the categorical programs funded in the last two decades, this Administration has misread an election victory as an overwhelming mandate to ease federal responsibility for educational services to workers and their children. In the massive shift of national resources through budget cuts and tax expenditures public education has taken an unfair share of the burden. Even more discouraging for those who would hope to achieve the American dream of a quality education program from kindergarten through college for themselves and for their children is the knowledge that this first round is just the beginning.

The labor movement, which has been in the forefront of education battles in local communities, state legislatures and the Congress, must be prepared to marshall its forces to sustain the gains achieved over the last 100 years and move forward with a program that addresses the crucial needs of our public education system.

The AFL-CIO celebrates its centennial year within the framework of an Administration that eloquently professes empathy for workers' problems, yet stridently proposes programs that contradict the rhetoric. The AFL-CIO again reaffirms its commitment to the goals enunciated by Samuel Gompers: "We want more schoolhouses and less jails, more books and less arsenals, more leisure and less greed, more justice and less revenge."

Elementary and Secondary Education

The AFL-CIO reasserts its commitment to building a strong public education system from kindergarten through college. In pursuit of that goal we firmly reject such proposals as educational vouchers and tuition tax credits as detrimental to the continued strength and growth of the public school system. We will continue to work for the full funding of education programs on every level of government to assure that sufficient resources may be available to address the critical needs of the public schools.

We continue to believe that leadership at the federal level is crucial to addressing the needs of special populations that were not attended to until the advent of federal aid. Quality programs and equal educational opportunity for all citizens continues to be our priority.

The Elementary and Secondary Education Act of 1965 was essentially repealed with the passage of the Education Consolidation and Improvement Act of 1981. Twenty-eight separate programs were folded into one block grant. However, the largest categorical programs such as Title I, grants to school districts, Handicapped Aid, and Adult Education were authorized separately. In addition, Impact Aid, Bilingual and Vocational Education will continue as separate programs.

We support the concept embodied in Title I as it was originally written in 1965, a program to address the critical education needs of children who were economically disadvantaged. This concept though under attack from several quarters survived in the new Education Consolidation and Improvement Act of 1981. New research indicates that Title I services have made an impact on achievement levels of youngsters receiving these services as compared to those who have not. We believe that this program illustrates the beneficial role that federal leadership programs in education can provide. The AFL-CIO opposes any further efforts to dilute Title I services through conversion to block grants or diminished funding.

Impact Aid, one of the largest programs of general assistance to school districts, was reduced by nearly 50 percent. The new legislation calls for a three-year phase out of the program for children whose parents live or work, but not both, on federal property. Schools on military property which have been supported by Education Department monies will be picked up by the Department of Defense. Elimination and reduction of Impact Aid will add to the burden of local school districts in financing educational services with inadequate tax revenues.

Career Education

The Career Education program which acquaints students with the many options available to them in the world of work lost 50 percent of federal funding and was folded into the block grant of 28 programs in the education legislation of 1981. We expect, however, that career education efforts will continue in the state and local education agencies.

We urge our affiliates to cooperate with teachers seeking to give their students additional information about the labor movement in their career education projects. We reiterate our concern that career education not be used to circumvent appropriate labor laws in the guise of providing work experience for students.

Labor in the Schools

Through renewed efforts with state federations and affiliates the department has been working to advance a balanced program of education about the labor movement in the nation's classrooms. The department has cooperated with efforts in Maryland, Michigan, California and Wyoming which are currently underway to introduce information about the labor movement into the school curricula. Conferences to assist teachers and educators working with this program have been held in the same states. Special emphasis has been given to the preparation and distribution of material and films to augment these programs.

Packets of information designed for students and teachers have been distributed by the department. A new publication, How Schools Are Teaching About Labor, provides teachers with curriculum that has been successfully introduced into the public schools. Supplemental to this effort are the materials prepared for labor's centennial and described in another section of this report and the department publication, Guide to Union Sponsored Scholarships.

Vocational Education

The AFL-CIO reaffirms its historic concern with the development of the vocational education system. At present, approximately three million young people complete vocational education programs that enable them to be successful in finding employment related to their training. At a period when it is most necessary to direct vocational education programs to specific populations to alleviate youth unemployment, the Administration has cut $49 million from the program and is asking for $553 million in 1982, a 30 percent cut in funding from 1980.

As the Congress prepares to reauthorize the Vocational Education Act of 1976, we call upon them to:

- address the particular needs of minority and inner-city youngsters for equal access to vocational education institutions.
- consider the resources needed for guidance counselling, teacher preparation and research.
- appropriate and authorize adequate funding levels for the purchase of new equipment and upgrading due to technological changes.
- address the questions of sex equity in all vocational education programs.
- maintain the federal leadership role by rejecting the block grant proposals.

We ask that the same resources that are allotted to college-bound students be allocated to those students in the vocational education system. For too long this system has been considered inferior to the general education offerings. We continue to believe a vocational education system that offers a quality program of basic education and general skills will make a significant contribution to alleviating youth unemployment.

Higher Education

The Reagan Administration budget critically curtails student aid funds for workers and their children. The budget cuts affect virtually every student aid program:

- Student assistance under the Social Security program was reduced by 25 percent and will be gradually phased out over a four-year period. This program was for the children of retired or disabled. It is estimated that approximately 200,000 students a year will be adversely affected by the elimination of these benefits.
- Guaranteed loans for college students were reduced with a means test imposed for families with annual incomes exceeding $30,000, eliminating 450 million from the loan program. In addition, a 5 percent origination fee will be required for all loans.
- The interest rate was raised from 9 to 14 percent for loans to parents of college students, with the interest rate tied to the Treasury bill rate.
- The maximum amount of the Pell grants to needy students was reduced for this year with further reductions due next year
- The interest rate was raised by 1 percent (from 4 to 5 percent) on the National Direct Student Loans, a program for particularly needy students.

These reductions in aid must be examined in combination with a general reduction of support for higher education on the state and local level due to special tax initiatives and loss of revenue. We ask our affiliates to continue their efforts to convince the Congress and the state legislatures that higher education be an attainable goal for every American regardless of race, color, creed, sex or economic background.

Access to higher education is as important for workers as it is for their children. The Education Department has been cooperating with universities and unions to increase the availability of general liberal arts degree programs geared to the interest of workers. These programs provide access to higher education for trade unionists, still fully employed, and at the same time forge a new and binding relationship between higher education and trade unionists.

A growing number of union members want to return to school or complete work on a degree. The AFL-CIO recognizes that the current crisis in social and economic policy requires that the labor movement educate its members in a broad range of subjects including economics, international affairs, technology, and urban studies. Liberal education programs designed for and delivered to working people will enable large numbers of unorganized students to become familiar with the history of work and the role of the labor movement. Faculty who staff these programs will develop a better understanding of trade unions.

The AFL-CIO supports and encourages this new development in higher education and sees it as offering a balance for students to the growing proliferation of business-oriented higher education programs. We urge union affiliates to encourage their members to take advantage of negotiated tuition aid benefits and union scholarships to continue their higher education.

Adult and Worker Education

Workers and their unions face increasingly complex legislation, new technology, and health and safety problems that make it mandatory that they have access to education programs that will help them effectively fulfill their duties to administer their unions and represent their members. State universities and community colleges that cooperate with unions to offer these educational services are now in the midst of a struggle for public funding to continue these programs. We call upon our affiliates to sustain their efforts in support of these institutions serving labor's needs and we ask their assistance as we seek to convince legislators on the state and national level that programs for workers are just as valid as programs for farmers and businessmen. We urge all affiliates to continue their special education efforts on behalf of minorities and women so that their preparation will enable them to move forward in leadership roles in the trade union movement.

The Education Department assists affiliates in worker education programs by maintaining close liaison with the universities and community colleges in the University College Labor Education Association. Through a cooperative conference in San Francisco in March 1981, 200 union and university labor educators were able to exchange information and programs impacting on trade union members.

Special programs for women trade unionists have been sponsored by the department. For the past six years the department has cooperated with the University and College Labor Education Association in sponsoring three week-long summer schools for trade union women. These regional schools concentrate on building skills and developing a greater knowledge of the history, structure and policies of the trade union movement to encourage women to take a more active role in their unions. A national conference on comparable worth was co-sponsored by the department, Cornell University, and the Coalition of Labor Union Women. The department staff also works with the Southern Advanced Labor School, the Rocky Mountain Labor School and is available for planning and staffing state federation summer schools, and other programs sponsored by the affiliates. A special one-day conference on critical TV viewing was co-sponsored with the Connecticut State AFL-CIO.

Department staff worked closely in assisting grantees of the New Directions program of the Occupational Safety and Health Administration. The Education Department and the OSHA Department of the AFL-CIO have joined with several affiliates and state federations in a cooperative project with the Workers Institute for Safety and Health.

The Department of Education prepares basic materials which are widely used by international and local unions throughout the country. The most widely used publications include: AFL-CIO Manual for Shop Stewards and Teaching Guide, How to Run a Union Meeting, Films for Labor catalogue, Use Films in Education Programs, and Your Local Needs an Education Committee.

Each spring the department prepares a Leadership Training Manual which is designed to educate local union leaders on key legislative and economic issues of concern to labor. Almost 5,000 copies of this manual have been ordered for use in summer schools conducted by international unions, state federations, and university labor education seminars. In 1981 the manual was used by 38 international unions, 24 state federations, 21 central labor bodies, the AFL-CIO Southern Staff Training program and three summer schools for union women.

The AFL-CIO Film Library houses the largest collection of films on labor and legislative subjects in the country. New films are continuously added to the collection which is used by unions, universities, public schools, church and other social service groups throughout the nation. Film discussion guides are prepared on most films. Education Update, a bimonthly newsletter about labor education programs and resources is distributed to union and university educators.

Council Recommendation

Elementary and Secondary Education

The AFL-CIO affirms its commitment to building a strong public school system to serve all our citizens. Therefore

1. We continue to reject tuition tax credit proposals and educational vouchers as detrimental to the advancement of the public schools.

2. We urge Congress to fully fund education programs designed to serve all students with special needs, i.e., Title I, handicapped aid, and bilingual programs. We further urge Congress to resist any new initiatives to dilute federal aid through budget cuts or conversion to block grants.

3. We ask all our affiliates to assist the schools in teaching about the labor movement. Films, materials and speakers from the labor movement are an invaluable tool for the classroom

teacher's efforts to introduce the study of labor into the school program.

Vocational Education

We call upon Congress not to shortchange the students in vocational education and to authorize a program that will enable the system to respond to the problems of youth unemployment. We ask that the reauthorization of Vocational Education continue the federal leadership role; target programs for inner-city residents; provide for teacher training and resources; authorize realistic levels of funding for new equipment and new technologies; and address the question of sex equity for both men and women.

Higher Education

Tuition for higher education should not be prohibitive for workers and their families. We renew our call to Congress to fully fund programs of student aid so that the goal of equal opportunity in education may be available to all students.

The AFL-CIO supports and encourages the development of worker-oriented liberal arts degree programs sponsored by community colleges and universities.

We specifically urge our members to begin or continue their higher education in programs designed and sponsored by unionized faculty.

Adult and Worker Education

We call upon our affiliates to increase their efforts in providing education programs for their members. We urge affiliates to work cooperatively to assure that programs for workers receive public support consistent with the funding for programs for farmers and businesses.

Statement by the AFL-CIO Executive Council

on

TUITION TAX CREDITS

Washington, D.C.

May 10, 1978

As national debate winds down on the question of education tuition tax credits, the AFL-CIO remains convinced that this form of student aid is inappropriate and that the aid package put forward by the Carter Administration for both elementary and secondary education and higher education is the proper approach.

The Administration proposals would increase college student assistance through the Basic Education Opportunity Grants by $1.2 billion. This would move the level of spending for this important program to $3.3 billion -- 3.1 million additional students would benefit as student participation moves from 2.2 million to approximately 5.3 million. We strongly support H.R. 15 and companion bill S. 1753, bills to extend the present Elementary-Secondary Act, which should be promptly passed by the Congress.

Much of the current debate centers on the question of extending tax credits to those parents who choose to send their children to private schools at the elementary-secondary level. We categorically reject this idea. It is a wide departure from the original concept of the Elementary and Secondary Education Act which targets federal aid to specific programs. In fiscal year 1979 the Carter proposals would channel $100 million to $250 million to private schools at the elementary-secondary level from the $6.9 billion budgeted for elementary-secondary education. Furthermore, it is estimated that aid to private schools could double in fiscal year 1980. Accordingly, we see no compelling argument to abandon the original concept of federal aid to education, for both public and private school students, established by the Elementary-Secondary Education Act.

The tax credit approach, as we have noted in the past, would reduce federal revenues by some $4.7 billion depriving other deserving federal programs of the necessary funds for their implementation.

Of the several bills introduced in the U.S. House of Representatives, H.R. 12050 reported by the House Ways and Means Committee is the most likely to reach the House floor. It is currently awaiting a rule from the Rules Committee. During the mark-up of the bill in Ways and Means, Rep. Waggoner (D-LA.) succeeded in removing tax credits from elementary-secondary education. This action, however, left intact the tax credit approach for student aid at the higher education levels and we oppose that result.

We call upon the Congress to reject all tuition tax credit bills and to adopt the Administration's proposals to increase tuition grants to college students as an alternative to tax credits. This approach will insure that federal funds provide maximum tuition assistance to those worker-families who truly need that assistance, while protecting the college students right to choose either a public or private institution.

We urge the passage of H.R. 15 and S. 1753. We believe these policies to be in the national interest.

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Senator Moynihan. I think we will follow our pattern of hearing each of you from the whole panel.

So, Mr. Freitag?

STATEMENT OF BERNIE FREITAG, VICE PRESIDENT, NATIONAL EDUCATION ASSOCIATION, WASHINGTON, D.C.

Mr. Freitag. Thank you, Mr. Chairman, members of the committee.

Senator Moynihan. It's nice to see the two of you side by side.

Mr. Freitag. Pardon?

Senator Moynihan. It's nice to see the two of you side by side. [Laughter.]

Mr. Freitag. Anything to make you happy, Senator. [Laughter.]

The National Education Association, the Nation's largest organization of teachers and others in the field of education, appreciates the opportunity to testify in total opposition to S. 528, the Educational Opportunity and Equity Act.

Senator Moynihan. Mr. Freitag, would you mind if I just interrupted to say that Mr. Humphrey did not give the entire statement that Mr. Shanker was going to give. I would like to put that in the record, and we will put yours in the record, as well.

Mr. Freitag. Thank you. We understood that to be the practice today.

So we are testifying in total opposition to S. 528, the Educational Opportunity and Equity Act of 1983.

I am Bernie Freitag, the vice president of the NEA, but today I am also speaking on behalf of the National Coalition for Public Education, a coalition of 51 national organizations which was denied an opportunity to testify today.

I come before you today not only as a teacher in our public schools and a national officer of the National Education Association but also as one who was educated kindergarten through a masters degree in Catholic schools. I spent 10 years of my life in the Teaching Order of the Brothers of the Christian Schools and also taught as a layman in a Catholic high school and in evening religious classes.

I am a Catholic who actively participates in the life and liturgy of my parish, which includes financial assistance to our parochial school system, and I continue my financial support of the private Catholic college I attended.

Perhaps even more because of my experience, I regret the desire of the Reagan administration through this tuition tax credit proposal to put itself between the hierarchy of the church and concerned members of the laity with regard to Catholic education. Often those who speak for the corporate church indicate enthusiasm and virtual unanimity among Catholics for tuition tax credit schemes. I and a host of others know this is not so, even among the clergy.

The point is, we want our Catholic schools to be ours, and we do not believe that Federal regulatory intervention will promote excellence in Catholic private education.

As those on the National Commission on Excellence in Education who worked on the report released this week so well stated, "Excellence in education must be our top national priority in the private and public sphere."

Tellingly, the National Commission cites the 1982 Gallup Poll of the public attitudes toward the public schools and the belief that public education should be the top priority for additional Federal funds.

The Reagan administration's tuition tax credit scheme as presented in S. 528 does nothing to advance that quality of education, nor does it promote good public or economic policy. The NEA also believes it to be unconstitutional.

Let's look at some of the most negative aspects of tuition tax credits. Under the Educational Opportunity and Equity Act of 1983, private schools would become the prime beneficiaries of Federal funds. Under S. 528, students in private schools would in effect receive a $300 subsidy from the Federal Government, nearly twice the current average per pupil public school Federal expenditure of $152. It would also be five times more than the current $60 average per pupil assistance from the Federal Government to private students.

It must be remembered that these mostly privileged private school students would be gaining in Government assistance at the same time that the Reagan administration has been ordering massive cuts in Federal funds to public school students.

Passage of tuition tax credit legislation would cause a double taxation burden on all citizens, but it would hit especially hard at the elderly, the single, and all childless people—growing segments in our society. It is one thing to ask this part of our population to support services within the public domain such as the public schools; it is quite another to require them to finance subsidies to the parents of private schoolchildren, most of whom are in high income brackets.

Benefits from tuition tax credits would be distributed unevenly economically, since families with incomes in excess of $20,000 will reap at least two-thirds of the benefits. Poor families, on the other hand, stand to gain little from this proposal. Families earning less than $10,000 represent only about 8 percent of all private school families, and for those with very low incomes who pay little or no taxes the administration tuition tax credit proposal will mean nothing, because it lacks a mechanism of refundability. To gain under S. 528, people must have tax liability, and not all of the poor do.

In addition, at a time of considerable conservative clamor for less Federal involvement in education, tuition tax credit subsidies for private schools will oblige the Federal Government to evaluate and regulate private schools.

S. 528 places vital civil rights protections in jeopardy. While the administration realized the folly of its ways in its tuition tax credit proposal in the last Congress and spends nearly half of this bill providing assurances that the tax relief afforded would not promote racial discrimination, it is clear that these assurances are far less than warranties. Civil rights language is not at all strong, and enforcement mechanisms built into the legislation are practically nil.

In addition, the NEA is even more wary of the administration's intent when it is viewed in light of the action by the Justice Department last year to refuse to come down strongly on the side of the IRS when it attempted to deny tax exemption from two avowedly discriminatory schools, Bob Jones University and the Goldsboro Christian Schools. Only after public embarrassment and much outcry did the administration alter its stand.

Finally, the NEA believes the administration's tuition tax credit scheme to be unconstitutional when viewed against a long line of Supreme Court decisions. As you are all aware, the Court has consistently struck down provisions which either directly or indirectly have the effect of advancing religion and offsetting the constitutional provision for separation of church and state.

I appreciate the opportunity to testify before you today, and the NEA urges you to reject tuition tax credits as bad public policy, as being unconstitutional, and as bad economic policy. Thank you.

Senator MOYNIHAN. Thank you, Mr. Freitag.

[Mr. Freitag's prepared statement follows.]

nea
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TUITION TAX CREDIT TESTIMONY

OF THE

NATIONAL EDUCATION ASSOCIATION

ON

S. 528, THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983

BEFORE THE

SENATE FINANCE COMMITTEE

PRESENTED BY

BERNIE FREITAG

VICE PRESIDENT

APRIL 28, 1983

Mr. Chairman and Members of the Committee:

The National Education Association—the nation's largest organization of teachers and others in the field of education—appreciates the opportunity to testify in total opposition to S.528, the Educational Opportunity and Equity Act of 1983. I am Bernie Freitag, Vice-President of the NEA.

NEA's policy positions on tuition tax credits and other schemes to provide public assistance to private schools are attached. These policies have been adopted by the annual NEA Representative Assembly, the organization's policy-making body of 7,000 delegates elected in each local and state affiliate in all 50 states, D.C., the overseas dependent schools, and Puerto Rico.

The National Education Association is unalterably opposed to, and will combat with all the resources at our command, tuition tax credits for any level of education, kindergarten through graduate school. NEA believes that tax subsidies for nonpublic schools through tax credits are bad public policy, unconstitutional and bad economic policy. We particularly object to the proposal before this Committee and the maliciousness of entitling a special interest piece of legislation for a very few of our better-off citizens a piece of "equity legislation." We object to legislation in Congress which speaks of "equal opportunity" and aids 10 percent of America's school children in private school while 90 percent of her children—the disadvantaged, language deficient, handicapped, and others wanting a quality education--are denied the funding necessary to fulfill a dream of equity and equality.

We believe that America must have high quality tuition-free public schools which allow all children to reach their full potential. The Reagan Administration has shown disregard for public education as it has proposed massive cuts in programs. The only initiatives have been to further undermine public education through tuition tax credit and voucher schemes to underwrite a private selective school system. Through this legislation the Administration proposes a new and costly tax burden on the elderly, single persons, and the vast number of citizens who have no children in school--public or private. They must pay taxes for a public school system and for a system of private schools to provide public subsidies for private choices.

We presume that this Committee will see further Administration proposals to undercut vital public services and add to the tax burden of citizens by providing public dollars for private purposes--perhaps a swimming pool tax credit for those who don't wish to go to public pools; or perhaps a transportation tax credit for those who use their car rather than public transportation.

NEA believes that choice and diversity must exist in education as in other sectors of the life of citizens. Government should, of course, raise public funds for public purposes. But we disagree fundamentally and completely with proposals to raise public funds and use them for private purposes outside of the purview of elected officials.

The mislabelled "Educational Opportunity and Equity Act" is cleverly described in Section 5 of the bill as not constituting financial assistance to education institutions or recipients. Yet it will cost billions of dollars in lost revenues from the U.S. Treasury. And by not calling it financial assistance, it keeps the legislation exempt from the provisions of the 1964 Civil Rights Act. The intention and effect of such designation is transparent.

ECONOMIC POLICY ISSUES

The Administration proposal for tuition tax credits must be viewed against the current climate for education. Is this program costing $2.5 billion over the next three years an investment in our economic growth? Will it stimulate the economy, decrease inflation, increase productivity, or aid the national defense? The answers are clearly no.

A Boost for Private Schools While Public Schools Are Cut:

The Administration is proposing this legislation as a boost to private education at the same time that it relentlessly attempts to chop federal aid to the nation's public education institutions. Because of strong public reaction and Congressional leadership, the Administration has been unsuccessful in reaching its goal of substantially diminishing federal aid to our public schools. But even though we have been able to resist the efforts of the Reagan Administration to make educational cuts in the past several years, if we look at the overall picture (See Appendix A) and factor in inflation, education funding has lost out. Education appropriations under the FY '83 Continuing Resolution for school year 1983-84 totalled $15.1 billion—$5.2 billion higher than the Reagan Administration called for; yet, to have kept up with 1980 funding levels, these appropriations need to be $20.1 billion. It is clear, than, looking at this reality, that there are hundreds of thousands of children who are hurting because of these cuts.

This shrinkage of federal assistance has hit especially hard at schools enrolling substantial numbers of children from impovershed families, but the cuts have been across-the-board, affecting adversely every kind of student, every school district, and most teachers. There is insufficient money at the state and local levels to make up the slack. Targeted federal education programs were enacted to meet national goals of equality of opportunity when the states were unable, or perhaps unwilling, to start or sustain them.

The Reagan Administration's tuition tax credit proposal provides a substantial subsidy for those parents who already have children in private schools and does not improve the quality of educational services in either public or private schools.

At the same time, the Administration is proposing legislation to introduce voucher payments as a substitute for Chapter I programs of the Education Consolidation and Improvement Act (ECIA), and to extend voucher payments to children attending private schools, further diluting federal support to public education.

These measures will force the federal government to forego billions of dollars in revenue, and the American society will receive absolutely nothing in return—hardly sound economic policy.

Non-stimulating credits: A Poor Procedure

The $2.5 billion in tuition tax credits over the next three years would be automatically lost to the Treasury. They would be non-stimulating credits which would not generate one dollar's worth of new revenues. In future years we can expect the cost to escalate as pressure builds to extend the benefits to college students and additional parents claim the credit and clamor to increase the amount.

NEA views the tuition tax credit scheme as totally inimical to the goal of the President, the Congress, and the public to reduce inflation. Any tax credit subsidy of private schools is an ironic contrast to the Administration's continuing call for fiscal restraint.

Double Taxation for Every Taxpayer:

Proponents of tuition tax credits for private schools claim that these subsidies are necessary to relieve them of the burden of "double taxation." NEA supports the right of these parents to choose--and to pay for--their children's education in nonpublic schools. The "double taxation" argument is a red herring. All citizens pay taxes to the local, state, and federal governments to finance programs which promote the general welfare--whether or not an individual taxpayer is in need of or eligible to receive the services. We pay for the construction and maintenance of streets and highways whether or not we drive. We pay taxes to support the American system of tuition-free public education, whether or not we are the parents of school-age children--and we all benefit from having an educated, employable citizenry as a result.

In fact, it is enactment of tuition tax credit subsidies for nonpublic schools that would represent dual taxation. Especially for the elderly, and single, childless people--both growing segments of our society--it would be a grossly unfair requirement for them to subsidize education for the children of largely high income families.

Geographic Discrimination

In addition to undue tax burdens on certain parts of our population who would not benefit in any way from tuition tax credits, the benefits from these subsidies would also be unevenly distributed geographically. For example, a study prepared by the National Coalition for Public education, "Tuition Tax Credits: A State by State Analysis", shows that the majority of all private school enrollment is concentrated in twenty states and the District of Columbia. Only eight of these—Pennsylvania, Hawaii, Delaware, New York, District of Columbia, Louisiana, Wisconsin and Rhode Island—have more than fifteen percent of their total elementary and secondary enrollment in non-public schools. Yet, these areas would receive almost all the benefits from tuition tax credits.

Meanwhile, another seventeen states—largely in the West and Southwest—would receive only a minute portion of the tuition tax subsidies, although taxpayers in these states would bear the expense for the program.

PUBLIC POLICY ISSUES

Economically, the tax credit proposal would be a disaster that is matched by its effects on education. Under S. 528, students in private schools would in effect receive a $300 subsidy from the federal government—nearly twice the current average per pupil public school federal expenditure of $152. It would also be five times more than the current $60 average per pupil assistance from the federal government to private students.

Through revisions in federal legislation, private schools are already receiving increasing amounts from federal sources. This year alone, they gave gained some $48 million tax dollars under the Education Consolidation and Improvement Act (ECIA) block grant. This means, for example, that in New York City, private schools will receive some $3 million of the $11 million total federal school aid targeted for the city under the Chapter II program.

And there is no telling where this inflationary spiral because of federal aid to private education would end as more parents will take advantage of tuition tax credits, the credits are extended for higher education costs, or private schools edge up their tuition.

A study prepared by the Education Commission of the States in 1982, "Tuition Tax Credits: Their Impact on the States", cited an analysis prepared by the Congressional Budget Office in that same year of the potential revenue loss to the federal treasury of various tuition tax credit schemes. This is what they projected:

> "The CBO estimates that a plan allowing a tax credit of 50 percent of tuition paid up to $250 would reduce federal income tax revenues each year by approximately $1.3 billion in 1982 dollars.[1] The CBO then estimates the impact of changing specific features of this basic plan. For example, by changing eligibility requirements to allow families with children enrolled in postsecondary schools to participate, the estimated costs to the federal government would increase to about $2.3 billion. Increasing the maximum amount of the credit from $250 to $500 would increase costs to $1.9 billion. Making the tax credit refundable would add an additional $.1 billion to the cost of the basic program. On the other hand, reducing the proportion of costs covered by the credit from 50 to 25 percent would reduce the cost of the program by about $.8 billion. Thus, key policy decisions with respect to eligibility, refundability, the proportion of costs covered and the maximum amount of the tax credit can dramatically affect the total cost and benefits of any tuition tax credit program.
>
> Another consideration concerning the cost and benefits of a tuition tax credit program is the response of parents and schools to the tax credit. If the credit is set high enough to induce a significant number of parents to transfer their children to nonpublic schools, the cost of the program would increase considerably with a concomitant increase in benefits to the new consumers of a private education. For example, if private school enrollments increased by 20 percent, the cost and benefits of the program could increase by about the same amount, depending on the structure of the tax credit. However, it is not known whether

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[1] These estimates are based on the Census Bureau's 1976 Survey of Income and Education, which has been updated to reflect current and projected economic, demographic and enrollment conditions.

> a tuition tax credit will lead to a significant increase in private school enrollments. The CBO report moreover, argues that tuition tax credits would produce strong incentives for existing private schools to raise tuition levels. It speculates that the larger the tax credit, the larger would be the price response of private schools, since these schools would be able to raise tuitions without adversely affecting the net tuition cost to parents. In this case, the benefit from the tax credit would be absorbed - completely or partially, depending on the price-response by schools instead of parents."

The effect of tuition tax credits on public school financing is clear: private schools would become the prime beneficiaries of federal funds. This would be a gross distortion of the American dream, especially if it results in Congressional support of privileged children at the expense of all children, and fiscally undermines public education. Tuition tax credit subsidies for private schools would have this effect. To pay for the revenue loss of at least $2.5 billion over the first three years, Congress will surely be forced to cut back on its contribution to public education.

In fact, the harsh reality of this "robbing Peter to pay Paul" philosophy of education was openly expressed by Assistant Treasury Secretary John E. Chapoton before the House Education and Labor Committee in the last session in Congress, when he said in response to a question from the Chairman:

> "First, tuition tax credits have a significant revenue impact, therefore, they must be considered together with other budget matters...Thus, Congress may wish to consider any tax credit in the context of direct education expenditures, so that the two types of programs complement one another and so that the total budgetary cost is at a desirable level."

In addition to the federal government's eight percent contribution, the states now contribute half the total cost of public education; local governments absorb the remaining 42 percent of the total cost. For those who argue that education is a state and local responsibility, the reality facing state and local governments today makes it extremely difficult for them to assume additional fiscal responsibility because of decreasing federal support for public education. The enactment of non-stimulating tuition tax credits for private schools will further erode the fiscal support of the public school systems. Ninety percent of American parents depend on that system for the education of their children. (See Appendix B.)

Credits Benefit the Well-to-Do

While proponents of tuition tax credits have stressed that the credits would not only be for the rich and well-to-do, statistics show otherwise. For example, a 1982 study, "Tuition Tax Credits: Issues of Equity", by James Catterall of Stanford University, stated that private school families with annual incomes exceeding $20,000 will reap at least two-thirds of the tuition tax credit benefits. These relatively well-to-do families are 60 percent of all private school parents. By comparison, families at the low end of the income ladder—those earning less than $10,000 are only about 8 percent of all private school families.

So, to say, as proponents of tuition tax credits do, that all parents would have the option of tuition tax credits, and therefore would be eligible to receive the same tax break, is a specious argument. The "choice" provided by tax subsidies for private schools would not be available and accessible to the majority since the actual cost of private school tuition is prohibitive to many. The real tax break will be for the middle and upper income parents who can afford to pay the balance of the tuition bill--that not subsidized by the tax credit. Most private schools require "up front" tuition payments in the fall. A tax credit applied to an April tax bill will not assist lower and middle income parents to participate.

There is another feature of S. 528 which will also prevent it from aiding those with low incomes: its lack of refundability. The vast majority of low income families who pay little or no tax because their income is so low cannot benefit. For example, according to the Census Bureau, forty-six percent of all Black and thirty-seven percent of all Hispanic families with school age children earned only $10,000 in 1980. On the average, these families paid taxes of $300 or less.

That means, for example, that one of these low income families with three children in a local parochial school would not be eligible for a credit, while a family with ample income -- up to $40,000 -- with three children in an expensive private school would be able to claim a $900 tax credit in 1985 under the Reagan plan. Even with refundability, tuition tax credits for private education is bad public policy. Without refundability it is plainly discriminatory.

The Competitive Edge--Are the Stakes Equal?

The Reagan Admininstration has stressed the need for competition in education--supposedly to keep the public schools 'on their toes' lest private education far overtake them.

But important factors are being kept out of the Administration's calculations.

* The public schools are obligated to enroll and to educate all comers regardless of innate ability, handicap, proficieny or deficiency in English. The argument of proponents that fair and healthy "competition" would result from tax credits ignores public policy of long standing. The public schools must educate all. They have never been designed, nor should they be, to compete on an equal footing with schools with discriminatory enrollment policies.

* Private schools are not mandated to accept children who are handicapped, have discripline problems or are otherwise difficult to educate. In fact, less than 3 percent of all religious schools provide programs for the handicapped and only three percent of all nonpublic schools offer vocational education.

Tax credits, as a federal policy, would promote the success of private schools, allow special benefits through taxes for wealthier families, and undermine the support of public schools through an unfair and unwise competition. The result would be an educational caste system. It is not inconceivable that the elite private schools and the disadvantaged public schools will increasingly amount to a separate and unequal dual education system in the United States.

Tuition Tax Credits: More Regulations

Ironically, at a time of considerable conservative clamor for less federal involvement in education, tuition tax credit subsidies for private schools will force the federal government to evaluate and regulate private schools. For example, Section 3 of the bill calls for the Secretary of Education to prescribe the non-discrimination forms to be used to assuring compliance with the legislation. The NEA strongly believes that since tax credits would be given for private school tuition, taxpayers have the obligation to demand that some certification of those schools as legitimate be made. And the NEA will vigorously pursue strong regulations to ensure public accountability.

The federal government cannot launch a new multi-billion dollar subsidy program without accompanying regulations and minimum standards. Probably through the IRS, the federal government will have to judge the legitimacy of a school benefiting from this new indirect subsidy. Anything less than a careful scrutiny and regulation of recipient private schools would leave the federal government open to legitimate complaints regarding the utilization of the taxpayers' tax dollars. To ensure that carelessly granted tax credits not become an additional burden on those paying taxes, the federal government will have to empower an agency to prevent fraud and abuse of the tax credit.

Certain fringe groups which have the Constitutional right to free speech and freedom of association would acquire the funding base to set up schools. Never before have they been eligible to operate a school and receive a federal subsidy. Nor should they become so.

Local taxpayers and their local school boards are held accountable for how tax dollars are spent in the public schools. Taxpayers would have the right to demand the same accountability from private schools benefiting from the federal subsidy provided by tuition tax credits. We view such scrutiny as inevitably running afoul of the "excessive entanglement" test in the Supreme Court's Lemon v. Kurzman decision.

CIVIL RIGHTS IN JEOPARDY

Civil rights protections are placed in jeopardy under this bill. Almost one-half of the Administration's tuition tax credit bill is devoted to trying to provide assurances that the tax relief afforded would not be used to promote racial discrimination. But on close examination we believe these assurances are far less than warranties.

In addition, the Administration's wavering stand on civil rights issues raises a great many concerns about its actual intentions of enforcing whatever civil rights measures are included in this bill. Afterall, it is this Administration which supported a change in IRS regulations to allow avowedly discriminatory private schools, Bob Jones University and the Goldsboro Christian Schools, to maintain their tax exempt status. Only after much public outcry did it reverse itself. And one has to wonder how sincere the Administration's pledge to maintain and enforce civil rights laws is when its tuition tax credit legislation has these features:

- Under Section 3 on "Racially Discriminatory Policy", it includes the wording "The term 'racially discriminatory policy' shall not include failure of any educational institution to pursue or achieve any racial quota, proportion, or representation in the student body." With this vagueness of language, a school admitting one 'token' minority student would be complying with the law. NEA believes this was not the intent of the nation's civil rights statutes.
- The bill permits a tuition tax credit only for portions of amounts paid as tuition to one or more educational institutions which are exempt from taxation under Sec. 501(c)3 of the IRS code. Yet nothing in the bill permits IRS to take action against a school that does, in fact, practice racial discrimination; under the bill, only the Attorney General may undertake enforcement activity. The Administration's response

to the Bob Jones University and Goldsboro Christian Schools case (cited above) as brought before the U.S. Supreme Court caused the Court to appoint a private attorney, former Secretary of Transportation William T. Coleman, to intervene in the Court case on behalf of the government.

- Under the bill, a school seeking to have the parents of its students enabled to claim a tuition tax credit for payments made to it must file a sworn statement to certify it has not followed a discriminatory policy during the preceding year. And in turn, taxpayers must also submit such statement to their tax form before they can be allowed to take the credit. This impotent stipulation will do nothing to guarantee a non-discriminatory policy.
- Under the bill, the Attorney General would be authorized to bring declaratory judgment suits to establish that a school in fact follows racially discriminatory policies. But the provisions establish a highly complex set of circumstances with little promise of effective relief. Given the current Attorney General's track record of non-intervention in civil rights cases, a tuition tax credit measure such as S. 528, that does not have strong civil rights enforcement mechanisms written into the legislation offers few, if any, guarantees.
- In addition to ambiguity with regard to the federal government's policing responsibilities, the Administration's bill also includes no provisions against private school discrimination on other grounds, such as sex, physical or mental handicap, or English language proficiency.

Public Opinion: Decidedly Against Tuition Tax Credits

There is one more important point in determining public policy and that is what the voters think. When state aid for nonpublic schools has been put before the voters in statewide referenda conducted over the last fifteen years, such schemes were overwhelmingly rejected, as detailed below.

STATE	YEAR	VOTE AGAINST AID	VOTE FOR AID
New York	1967	72.5%	27.5%
Michigan	1970	57 %	43 %
Nebraska	1970	57 %	43 %
Maryland	1972	55 %	45 %
Oregon	1972	61 %	39 %
Idaho	1972	57 %	43 %
Maryland	1974	56.5%	43.5%
Washington State	1975	60.5%	39.5%
Missouri	1976	60 %	40 %
Alaska	1976	54 %	46 %
D. C.	1981	88 %	12 %
Massachusetts	1982	62 %	38 %
California	1982	61 %	39 %

CONSTITUTIONAL ISSUES

NEA has long fought to protect the First Amendment's guarantees regarding the exercise of religion free from governmental intrusion.

We were a founding member of the National Coalition for Public Education and Religious Liberty (National PEARL) and believe that subsidizing at federal expense certain groups of individuals so that they may exercise their religious preferences would have the effect of advancing religion in violation of the First Amendment.

A long line of Supreme Court cases in recent years has dealt with the constitutionality of various mehtods of providing aid to nonpublic elementary and secondary schools. The court has consistently struck down provisions which either directly or indirectly have the effect of advancing religion and offsetting the constitutional provisions for separation of church and state.

The _only_ forms of "aid" which the Court has found to be consistent with the First Amendment are those which provide general welfare and health services, textbooks, and transportation to _all_ children. In a recent opinion, _Wolman_ _v_ _Walter_, 97 S. Ct. 2593 (1977), the Supreme Court was careful not to extend this doctrine beyond its previous decisions and indicated that when faced with the question of expanding nonpublic aid or of prohibiting it, prohibition should be the favored course.

One case pending before the 1983 session of the Supreme Court, Mueler v. Allen, (676 F. 2d 1195 (8th Cir. 1982), deals with a Minnesota statute that authorizes certain deductions from state income tax for taxpayers who incur expenses for tuition, books and instructional materials and transportation in sending a child to public or private elementary or secondary school. While the statute does allow for deductions for expenses for children attending public schools, it is clear that the bulk of the benefit of any such statute would be to the parents who pay tuition to the mostly sectarian private schools. NEA believes it is therefore unconstiutional.

We believe that the unconstitutionality of the Reagan Administration's tuition tax credit scheme for elementary and secondary nonpublic schools is without question in light of the Supreme Court's ruling in Committee for Public Education and Religious Liberty v Nyquist, 413 U.S. 756 (1973). The Court in Nyquist found that a New York statute providing income tax benefits to parents of children attending nonpublic schools is a violation of the First Amendment since it would have the "impermissible effect of advancing the sectarian activities of religious schools."

Although the New York statute was perpetrated under the guise of a "tax deduction," rather than a tax credit, the Court saw no distinction in the labels and indicated that regardless of the name, its effect was unconstitutional. Whether you call it a tax credit, tutition reimbursement, or tax deduction, the account books look the same and the effect is the same.

Supporters of tuition tax credits contend that the First Amendment is not violated since the tax benefits adhere to the parent of the nonpublic school child, not to the private school itself. But the Supreme Court in Nyquist specifically rejected this argument and found that the effect of the aid is "unmistakably to provide desired financial support for nonpublic, sectarian institutions."

For these reasons, the National Education Association urges the Finance Committee to reject S. 528 and any other similar tuition tax credit proposal. In our view, the needs and promises of public elementary and secondary education are of primary importance, and the energies of government are best used in broadening the scope of opportunity.

Appendix A

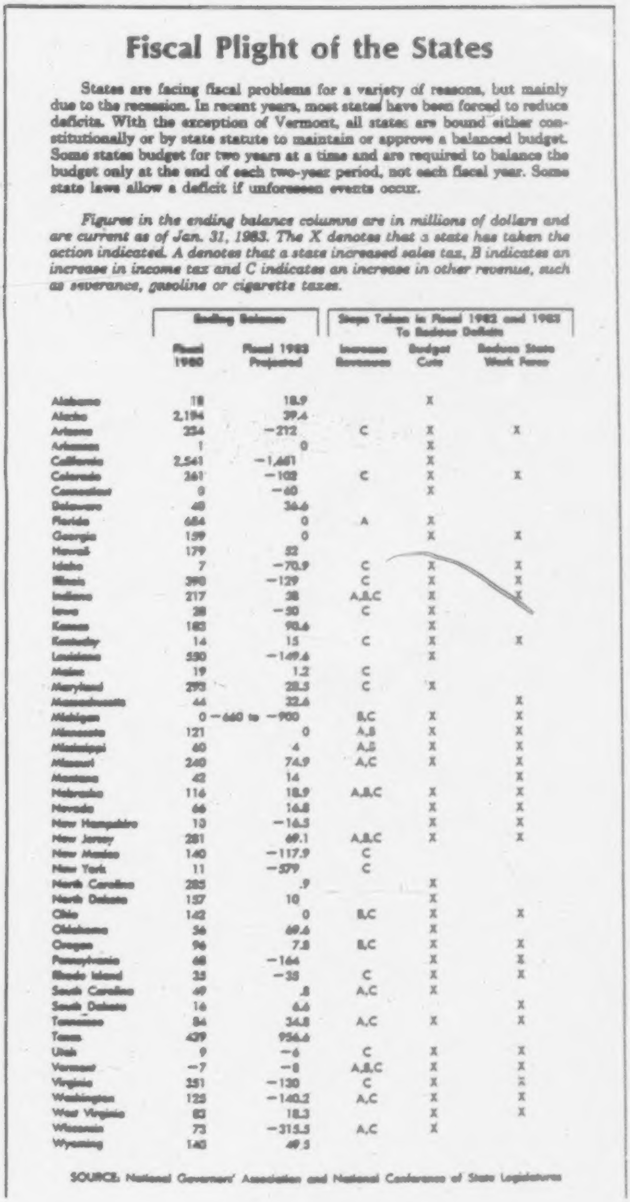
BUDGET AND APPROPRIATIONS

	Appro. FY '80 Sch.Yr. '80-81	Continuing Resolution FY '81 Sch.Yr. '81-82	Continuing Resolution & Supplemental FY '82 Sch.Yr. '82-83	Continuing Resolution FY '83 Sch.Yr. '83-84
ESEA (Title I) (ECIA Chapter I) (Basic Grants)	3,215,600,000	3,111,620,000	3,040,980,000 -(2,562,754,000)	3,167,894,000 -(2,687,754,000)
State Block Grant (ECIA Chapter 2)	731,896,000 (combined programs)	614,471,000	483,840,000	479,420,000
Impact Aid (Not forward funded)	825,000,000	756,750,000	456,200,000	480,000,000
Education for the Handicapped, Gifted & Talented	1,049,000,000	1,025,231,000	1,068,580,000	1,110,252,000
Vocational Ed. (Adult Ed.)	779,241,000	681,639,000 +(100,000,000)	648,625,000 +(86,400,000)	721,500,000 +(95,000,000)
Guaranteed Student Loan Program (GSL) (Entitlement)	1,609,344,000	2,535,470,000	3,073,846,000	3,100,500,000
Bilingual Education	191,463,000	161,427,000	138,057,000	138,057,000
Education Total	15,600,000,000	15,200,000,000	14,600,000,000	15,100,000,000
Education Total *	15,600,000,000	17,400,000,000	19,200,000,000	20,100,000,000

* Figures for FY 81 through FY 84 represent amounts required to maintain FY 1980 funding levels after accounting for inflation. Inflation measure used = CPI - U for the fiscal year running from October 1 through September 30.

Source: NEA Government Relations - 3/83

Appendix B



Fiscal Plight of the States

States are facing fiscal problems for a variety of reasons, but mainly due to the recession. In recent years, most states have been forced to reduce deficits. With the exception of Vermont, all states are bound either constitutionally or by state statute to maintain or approve a balanced budget. Some states budget for two years at a time and are required to balance the budget only at the end of each two-year period, not each fiscal year. Some state laws allow a deficit if unforeseen events occur.

Figures in the ending balance columns are in millions of dollars and are current as of Jan. 31, 1983. The X denotes that a state has taken the action indicated. A denotes that a state increased sales tax, B indicates an increase in income tax and C indicates an increase in other revenue, such as severance, gasoline or cigarette taxes.

	Ending Balance		Steps Taken in Fiscal 1982 and 1983 To Reduce Deficits		
	Fiscal 1980	Fiscal 1983 Projected	Increase Revenues	Budget Cuts	Reduce State Work Force
Alabama	18	18.9		X	
Alaska	2,194	39.4			
Arizona	234	−212	C	X	X
Arkansas	1	0		X	
California	2,541	−1,461		X	
Colorado	261	−102	C	X	X
Connecticut	0	−60		X	
Delaware	40	36.6			
Florida	684	0	A	X	
Georgia	159	0		X	X
Hawaii	179	52			
Idaho	7	−70.9	C	X	X
Illinois	390	−129	C	X	X
Indiana	217	38	A,B,C	X	X
Iowa	28	−50	C	X	
Kansas	183	90.6		X	
Kentucky	14	15	C	X	X
Louisiana	530	−149.6		X	
Maine	19	1.2	C		
Maryland	293	28.5	C	X	
Massachusetts	44	32.6			X
Michigan	0	−660 to −900	B,C	X	X
Minnesota	121	0	A,B	X	X
Mississippi	60	4	A,B	X	X
Missouri	240	74.9	A,C	X	X
Montana	42	14			X
Nebraska	116	18.9	A,B,C	X	X
Nevada	66	16.8		X	X
New Hampshire	10	−16.5		X	X
New Jersey	281	69.1	A,B,C	X	X
New Mexico	140	−117.9	C		
New York	11	−579	C		
North Carolina	285	.9		X	
North Dakota	157	10		X	
Ohio	142	0	B,C	X	X
Oklahoma	56	69.6		X	
Oregon	96	7.8	B,C	X	X
Pennsylvania	68	−164		X	X
Rhode Island	35	−35	C	X	X
South Carolina	49	.8	A,C	X	
South Dakota	16	6.6			X
Tennessee	84	34.8	A,C	X	X
Texas	429	956.6			
Utah	9	−6	C	X	X
Vermont	−7	−8	A,B,C	X	X
Virginia	251	−130	C	X	X
Washington	125	−140.2	A,C	X	X
West Virginia	83	18.3		X	X
Wisconsin	73	−315.5	A,C	X	
Wyoming	140	49.5			

SOURCE: National Governors' Association and National Conference of State Legislatures

Source: Congressional
Daily, March 15, 1983

Appendix C

NEW BUSINESS ADOPTED BY 1982 REPRESENTATIVE ASSEMBLY

Tuition Tax Credits

The National Education Association continues to oppose tuition tax credits and voucher plans because they constitute bad educational policy, bad economic policy, and bad public policy. NEA will continue to do all that is possible to defeat tuition tax credit proposals in the Congress. NEA will intensify its efforts to work cooperatively with all individuals and groups in support of the public schools and in opposition to tuition tax credits and voucher plans wherever and whenever they are proposed.

NEA urges all members and affiliates to utilize the Association's many community action activities and community contacts and relationships to give all Americans the facts about these proposals that threaten the future of our American public schools.

NEA calls on all members and affiliates to participate in the fall petition drive against tuition tax credits, helping the National Coalition for Public Education make this effort a resounding success. (1982-F)

Court Challenges to Tuition Tax Credit and Voucher Plans

The NEA shall initiate a court challenge of the constitutionality of any tuition tax credit or voucher plan adopted as law. This intent shall be made known to Congress. (1982-60)

Senator MOYNIHAN. Mr. Casserly, you are next.

I wanted to tell you, don't you worry about it. If we get up and leave, it's not like we are Supreme Court justices and you have exceeded your 10 minutes, but there is a vote on.

Mr. CASSERLY. I will try not to take it personally. I feel a little bit like the last guest on the Johnny Carson Show. I want to try to get in all of my stories before the bell rings. [Laughter.]

[Mr. Casserly's prepared statement follows:]

PREPARED STATEMENT BY MICHAEL D. CASSERLY, COUNCIL OF THE GREAT CITY SCHOOLS

Mr. Chairman, my name is Michael Casserly and am the Legislative and Research Director for the Council of the Great City Schools. I am pleased to testify today before this esteemed Committee on behalf of the Council and as a member of the National Coalition for Public Education, a broad-based group of over 50 national organizations unified in opposition to all tuition tax credit proposals.

Currently in its 27th year, the Council of the Great City Schools is an organization of 30 of the nation's largest urban school systems. On its Board sit the superintendent, one Board of Education member from each district, making the Council the only national organization so consituted and the only education whose membership is solely urban.

The Council's membership serves over 4 million youngsters, or 11 percent of the nation's public school enrollment. Approximately 32 percent of the nation's Black children, 26 percent of the Latino children, and 21 percent of the Asian children are being educated in our schools. Almost one-third of our enrollments are of children who reside in families receiving public assistance, and over 70 percent of the average enrollment is minority.

Mr. Chairman, I would like to devote my testimony to the results of a study that our organization conducted jointly last year with the American Association of School Administrators. The study, "The Effect of Tuition Tax Credits on Urban Schools", was done as an analysis of the original Administration tuition tax credit bill, S. 2673, with maximum credits of $100, $300, and $500. While the new bill, S. 528, has credits of $100, $200, and $300; the original study continues to offer valuable information on the effects of federal spending and tuition tax credits on the nation's public schools.

Last year the Committee was very concerned about the differences in federal funding for public elementary and secondary education and comparable non-public education. The committee asked the Department of Education the following question:

"How much does the Federal government spend on public school students, per student, and how much do you estimate they would spend under this bill? Is it fairly comparable?"

In response, the Department of Education estimated that in the 1981-82 school year it spent approximately $152/student from programs under its jurisdiction, and about $356/student was spent from all federal sources including school lunch, overseas schools, day care and others. The key number here is the $152/student because it, like the tuition tax credit, represents a federal commitment for instructional purposes—unlike health or nutritional programs which are devoted to non-instructional goals. Tuition tax credits are tied to the costs of tuition or instruction, as its name implies. The Department goes on the state that comparable aid to non-public schools is "difficult to estimate . . . but totals perhaps one-fifth that of federal support for students in public schools on per pupil basis." This aid to private schools, then, would amount to about $30/student and comes through the local public schools from Chapter 1 (ECIA), Chapter 2 (ECIA), Public Law 94-142, Vocational Education, and other Department of Education programs. The total amount of indirect aid to non-public schools from the Department would equal about $150m if these assumptions are correct.

The study conducted by the Council last year surveyed 65 major school systems across the country and collected Department of Education—or federal instructional expenditure data—on both public and non-public schools. The results showed that the Department of Education spent about $206/student for public school enrollees in the 1980-81 school year and about $183/student in the 1981-82 school year. This latter figure is comparable to the $152/student figure used by the Department last year, but is slightly higher due to the greater needs of the districts in the study.

This current school year Department of Education expenditures have dropped to about $160/student.

If the Congress continues to deny further education budget cuts, this $160/student should level off at about $152 during the 1983-84 and 1984-85 school years. If the Administration's original budgets were accepted by Congress, the Department of Education subsidy for public education would drop to about $106 in fiscal year 1984. Even with a freeze of spending, public school instructional aid would have dropped about 21 percent per pupil in 2 years.

The pattern of indirect federal instructional aid for nonpublic education is evolving in the opposite direction. In the 65 cities contained in this study, there were about 1.4 million students enrolled in nonpublic schools, or about 26 percent of all nonpublic school students in the nation. Approximately $43/student in Department of Education funds were spent by the public schools in these cities on behalf of the nonpublic schools in both the 1980-81 and 1981-82 school years, or about one-fifth public school amount as indicted by earlier Department of Education testimony. (This $43/student is comparable to the $30/student estimate indicated earlier). The amount of funding this current (1982-83) school year should rise to about $50/student for nonpublic instructional aid.

If tuition tax credits are added to the federal instructional subsidy for nonpublic education, then the past ratios favoring public education are reversed—not equalized. Adding a $100 credit for nonpublic education per eligible student to the categorical instructional aid that nonpublic schools already receive would bring the total nonpublic subsidy to about $115/sutdent in the 1983-84 school year, to $224/student in the 1984-85 school year, and to about $329/student in the 1985-86 school year—under the original, more expensive proposal, S. 2673.

Spending by the federal government, then, on the instruction of public school students would fall from $206/student in 1980-81 to about $160/student in 1985-86 if no further education cuts are made, a 21-percent decrease. The subsidy to nonpublic education (in the form of combined categorical aid and tuition tax credits) would increase from $43/student to $329/student over the same time frame, a huge increase. By the 1985-86 school year, the federal government will be spending almost 3 times more on private education than on public education according to the initial analyses.

These figures as we have noted do not include aid for non-instructional purposes like feeding and day care. If these programs were included then the federal subsidy would reach some level of comparability by 1984 or 1985 with the tax credits. However, by that time the bulk of the federal subsidy for public education would be in the form of nutritional aid and the bulk of the subsidy for private education would be in the form of instructional aid, assuming no further cuts in school lunch which have been espoused by the Administration.

This change in the pattern of funding to school systems especially large urban ones, represents a major de facto policy change in how the federal government handles education. It signals a federal policy switch toward public education from teaching to feeding. It does not as the Administration purports, equalize the resources going to public and nonpublic education.

This major switch in federal education policy in not only unfair but the pattern of new spending has some bearing on some of the arguments that proponents of tuition tax credits have made.

First of all, one of the arguments presented by proponents of the credits is that parents of private school students pay twice for education—once through local property taxes to fund public schools, and the second time for tuition to send their children to private schools. If these credits become law, however, public school parents will be paying twice: once in local property taxes for public schools, and a second time to fund the credits for parents to send their children to private schools.

Secondly, proponents continue to argue that tuition tax credits will promote competition between public and private schools, and that public schools will have to improve or die. It is widely acknowledged that private schools can be selective in their admissions process and do not have to accept high cost or troublesome students. Although the private schools have but one-fifth the need of public schools, the federal government is proposing that it now fund private school instruction at a higher rate than public instruction. There can be no reasonable expectation that public schools would be able to compete with the privates under circumstances of higher need and lower funding. No healthy competition could grow under such conditions, even if one assumed that public and private schools were institutional sectors subject to the traditional rules of competition.

Third, the tax credits will result in major inequities between federal education expenditures for private schools in the cities and public schools in white collar suburban areas. Many upper middle class suburbs receive relatively small amounts of federal assistance. Although need is often lower in these districts, the tax credits will result in the federal government spending nearly six times more on the private schools in that area than on the public schools. The smaller the amount of federal education monies that is received by a local school system (on a per pupil basis), the greater the disparity will be in the funding of public and private schools with the tax credit. What will ultimately happen with these credits is that taxpayers in the wealthier suburbs will foot the bill for city parents to send their children to private schools.

Fourth, the tax credits will result in major regional differences. Areas of the country having fewer nonpublic schools will see their tax money going to those regions that do have privates. This phenomena will be particularly strong in the West and Midwest. For example, in Mesa (Arizona) there are only about 600 students in private schools. Because the public schools have very few Title I eligible children, the district receives only $66/child from the federal government. Even with the tax credits of about $300/child there are so few private school children that the city is not likely to recoup the taxes it has sent to a district like Boston to pay for private schooling there.

Fifth, the tuition tax credits represent a major change in emphasis in that the federal education apparatus would tilt away from the needy and the poor toward those in better circumstances. Such new inequities will have serious ramifications for the education of the nation's racial minorities which are already over-represented within the poverty population. The 65 cities in this survey contain over thirty percent of all racial minority children in the nation and about one-third of all the poor children, yet they will be told that they will receive less educational support from the federal government.

Besides being dubious federal policy, unconstitutional, discriminatory, and meddlesome in the legitimately independent authority of the private schools, these proposed tax credits are unfair as is much of what emerges from this Administration. It is unfair to the poor, to minorities, and to the public schools themselves.

We do not wish to argue here that if the credits were simply cheaper that equity would appear. The public school community is opposed to tuition tax credits no matter what the amount. The data presented here should give ever greater credence to the notion that these proposed tuition tax credits is one more avenue for taking from the poor and giving to the rich, a federal approach that is as ill conceived as it is deplorable.

Mr. Chairman, I thank you for this opportunity to testify and will try to answer your questions. Thank you very much.

STATEMENT OF MICHAEL CASSERLY, LEGISLATIVE AND RESEARCH ASSOCIATE, THE COUNCIL OF GREAT CITY SCHOOLS, WASHINGTON, D.C.

Mr. CASSERLY. My name is Michael Casserly, and I am Legislative and Research Director for the Council of Great City Schools. I am pleased to testify before this esteemed committee on behalf of the council and also as a member of the National Coalition for Public Education.

Mr. Chairman, I would like to devote my testimony this afternoon to the results of a study that our organization conducted last year with the American Association of School Administrators. The study, entitled "The Effect of Tuition Tax Credits on Urban Schools" was done as an analysis of the original administration tuition tax credit bill, S. 2673, that had maximum credits of $100, $300, and $500.

While the new bill, S. 528, has credits of $100, $200, and $300, the original study continues to offer valuable information on the effects of Federal spending and tuition tax credits on the Nation's public schools.

Last year the committee was very concerned about the differences in Federal funding for public elementary and secondary education and for comparable nonpublic education, and it was evident today that this concern still exists.

Last year, in response to this concern, the Department of Education estimated for the committee that in the 1981–82 school year it spent approximately $152 per student for programs under its jurisdiction and about $356 per student was spent from all Federal sources, including school lunch, overseas schools, day care, and all others. The key number here is the $152 per student because it, like tuition tax credits, represents a Federal commitment for instructional purposes, unlike health and nutritional programs which are devoted to noninstructional goals. Tuition tax credits are tied to tuition or instruction, as its name implies.

The Department goes on to state that the comparable aid to nonpublic schools is difficult to estimate but totals perhaps one-fifth that of Federal support for students in public schools on a per-pupil basis. This aid to private schools, then, would amount to about $30 per student and comes from a variety of programs through the local public schools, for instance, chapter I of the Education Consolidation Improvement Act, chapter II, the education block grant, Public Law 94–142, vocational education, and other Department of Education programs.

The study conducted by the council last year surveyed 65 major school districts across the country and collected Department of Education or Federal instructional expenditure data on both public and nonpublic schools. The results showed that the Department of Education spent about $206 per student for public school enrollees in the 1980–81 school year, and about $183 per student in the 1981–82 school year. In this current school year the Department of Education expenditures have dropped to about $160 per student in the surveyed districts.

If the Congress continues to deny Federal education budget cuts, this $160 per student should level off to about $152 during the 1983–84, 1984–85, and 1985–86 school years. If the administration's original budget cuts had been accepted, the Department of Education's subsidy for public education would drop to about $106 per student in fiscal year 1984. Even as things stand right now, and subsidies continue to be frozen, the amount of money from the Department of Education has dropped by approximately 21 percent in the urban public schools.

The pattern of indirect Federal instructional aid for nonpublic education is evolving in the opposite direction, however. In the 65 cities contained in our study there were about 1.4 million students enrolled in nonpublic schools, or about 26 percent of all nonpublic students in the Nation. Approximately $43 per student in Department of Education funds were spent by the public schools in these cities on behalf of the nonpublic schools in both the 1980–81 and 1981–82 school years, or about one-fifth the amount that the public schools received, as indicated by the earlier Department of Education testimony.

If tuition tax credits are added to the Federal instructional subsidy for nonpublic education, then the past ratios favoring public education are reversed, not equalized, as the Department of Education claims. Adding a $100 credit for nonpublic education for eligible students the categorical instructional aid that nonpublic schools already receive would bring the total nonpublic subsidy to about $115 per student in the 1983-84 school year, to about $224 per student in the 1984-85 school year, and to about $329 per student in the 1985-86 school year. This is under the original administration version that had a $300 and $500 limit.

We have tried to reestimate these figures based on the new administration bill. Our estimate last year was that the Federal Government, under an ultimate $500 limit, would spend almost three times more on private education than on public education, according to our original analysis. We have reestimated those figures, Mr. Chairman, and it looks like that even with a scaled-down tuition tax credit bill that has a $300 maximum, that the Federal Government will subsidize nonpublic education at the rate of approximately 1.5 to 2 times that of instructional aid going to public education.

The CHAIRMAN. I wonder if I may ask you to look at the study I had made a part of the record this morning from the Congressional Research Service, which indicates that about $13.7 billion in tax subsidy will be provided to public school districts in fiscal year 1983, largely through tax deductions permitted for State and local taxes and through the nontaxability of interest on certain State and local bonds. Now is all of this information included in your study?

Mr. CASSERLY. All we took a look at was Federal instructional subsidy to both public and nonpublic schools. I would have no reason to doubt that the amount of tax deduction for public education would probably be in the neighborhood of about $13 billion.

I would be very interested, however, in finding out exactly what the tax subsidies have been for private schools.

The CHAIRMAN. Well, it would be very helpful to us if you wouldn't mind doing that. Now, maybe you would mind it.

[Laughter.]

Senator MOYNIHAN. Mr. Chairman, may I say that Mr. Casserly has brought us a very nice piece of research. With the Chairman's permission, I am going to send it over to the Department of Education and ask them what have they got to say, because, you know, this is very clearly quantified, and fairly argued, and accurately so, I'm sure.

I am very sorry that we were told there would be no votes but there is a vote on Senator Kennedy's amendment to the sunset provision on immigration. Do you want to give me any advice? I have never heard of this amendment.

Mr. CASSERLY. Does it involve a tax credit?

[Laughter.]

Senator MOYNIHAN. It does not involve a tax credit.

If you will forgive the tyranny of the bells, I thank you very much. I will send to Secretary Bell this particularly nice piece of work, and we thank you for doing it and for bringing it to the committee.

I repeat what Senator Packwood said earlier, that as far as he and I are concerned the public schools come first, and clearly the atmosphere in which you are cutting public aid to public education is not one that is very conducive to this particular subject right now.

Mr. CASSERLY. Thank you very much.

Senator MOYNIHAN. The hearing is thereby closed, and we thank our recorder.

[Whereupon, at 3:06 p.m., the hearing was concluded.]

[By direction of the chairman the following communications were made a part of the hearing record:]

Alfonse D'Amato

Statement by Senator D'Amato Before The Senate Finance Committee On Tuition Tax Credits.

Mr. Chairman, I have been a long-time supporter of tuition tax credits for middle class families with children attending private or primary schools. The bill before the Committee today, S. 528, is a most effective means of encouraging diversity in our educational system.

I firmly believe that all individuals, regardless of economic background, should have the right of free choice. This is an inalienable right granted to all Americans. However, for too long the middle class has not had the opportunity to choose an educational system for their children. S. 528, will allow the less well-to-do to make a dispationate selection of a school free from economic considerations. This is in the best tradition of our Nation.

Tuition tax credits is a fiscally responsible notion. Between 1983 and 1985 only $450 million of revenues will be foregone. Each year thereafter, the cost to the Treasury will be less than $800 million. This will be offset by reducing the burden on local government of educating a child in public schools. It also does not quantify the economic benefits of investing in the education of our citizens.

Finallly, Mr. Chairman, S. 528,has built-in safeguards ensuring that schools espousing discrimination do not benefit from federal tax breaks. The anti-discrimination provisions of the bill are extensive and airtight.

I am proud to be an original cosponsor of S. 528 and it is my hope that the Committee will promptly report the legislation to the Senate floor for further debate.

STATEMENT OF REP. LAWRENCE COUGHLIN
before the
SENATE FINANCE COMMITTEE
April 28, 1983

Mr. Chairman, as a longtime advocate of tuition tax credit initiatives, I am pleased to have this opportunity to present testimony to your committee on S. 528, the Educational Opportunity and Equity Act of 1983.

Education has been and will continue to be one of the Federal government's highest priorities and educational alternatives are an important element in our Nation's educational system. While our public school system offers excellent instruction for the majority of students, I am sure no one would deny that not all children's educational requirements can be met under the same system of instruction or in the same schools.

Currently, ten percent of all elementary and secondary school students are enrolled in private institutions. The majority of these children come from families with yearly incomes under $25,000. These families are now faced with the double burden of paying taxes to support the public school system while paying tuition expenses for private education. Unfortunately, increasing tuition costs, coupled with our troubled economic situation in general, have made it increasingly difficult for many families to exercise their right to choose between public and private education. Tuition tax credits are one way to ensure that alternative education continues to be a viable option for many of these families.

As you know, the Administration's tuition tax credit proposal provides a maximum credit of $100 in 1983, $200 in 1984, and $300 in 1985. The measure further stipulates that no credit may exceed fifty percent of tuition expenses. Since credits for higher income brackets are phased out, the Educational Opportunity and Equity Act will target assistance to middle- and low-income families. Moreover, with the inclusion of a refundability provision (the concept of which was approved by your committee last year) benefits can be further targeted to those who need them most.

The estimated cost of this legislation is only $1.5 billion over the three-year period from 1983 to 1985. When the credits are fully phased in, the cost will be less than $800 million per year. I believe this is a relatively modest investment, particularly when compared to the nearly $44 billion the Federal government spends on education and education-related programs and the estimated $12.7 billion the Federal government spends indirectly on public education by allowing individuals to deduct state and local tax payments from federal taxes due. Moreover, this is one investment which will see increasing returns in the future.

One area of the Administration's tuition tax credit proposal which has received a great deal of attention is the anti-discrimination language contained in S. 528 and its companion bill in the House, H. R. 1730. I share the concerns that already have been voiced by a number of my colleagues in the House and in the Senate and believe all concerned are wholely committed to ensuring that any such legislation contains strong, enforceable provisions which will prevent tax credits from going to parents who send their children to schools that discriminate on a racial basis. The efforts by the White House and Committee members last year to reach a reasonable and responsible compromise on this issue were commendable indeed and I am convinced that provisions which are satisfactory to all concerned can again be worked out.

Mr. Chairman, I sincerely hope this Committee will expedite consideration of S. 528 and believe the legislation merits favorable consideration by both Houses of Congress.

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Statement of the

American Federation of State, County and Municipal Employees, AFL-CIO

The American Federation of State, County and Municipal Employees, a labor union representing more than one million public employees nationwide, including many non-teaching staff in public schools, appreciates the opportunity to submit a statement opposing S. 528, the "Educational Opportunity and Equity Act of 1983." The Administration supported legislation would provide tuition tax credits to parents of students attending private non-profit elementary and secondary schools.

AFSCME believes that tuition tax credits are inappropriate under any circumstances, but particularly now, when there is a call for excellence in education. On April 26, the National Commission on Excellence in Education released its report, A Nation At Risk: The Imperative For Education Reform. The 18-month study reveals that: "Our nation is at risk. Our once unchallenged preeminence in Commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world...the educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people."

In recommending more stringent course loads, strengthened standards and expectations, longer school days, and improved teacher preparation, the Commission indicates that though state and local officials have the primary responsibility for financing and governing the schools, the Federal government has the primary responsibility to identify the national interest in education and should help fund and support efforts to protect and promote that interest. If in fact the federal government cannot fund the call for educational excellence, it, at least, does not have to indirectly take potential federal resources away from public education through tuition tax credits for private school students. Rather, during this period of technological advancement, it seems that a real commitment to educational excellence would be better served through greater federal attention to public schools which provide education for all students.

Specifically, S. 528 would allow parents to claim a non-refundable credit on their federal income tax for private school tuition costs up to a maximum of fifty percent of tuition paid for each child to a maximum credit per child of $100 in 1983, $200 in 1984, and $300 in 1985 and subsequent years. A full credit would be available only to families with an adjusted gross income up to $40,000. The credit would phase out on incomes above $40,000 and phase out entirely for families with an income of $60,000. AFSCME's concern with the tuition tax credit concept is based on four arguments. Tuition tax credits are economically unsound and raise serious constitutional, civil rights and educational policy questions.

It is inconceivable that an Administration which proposed reducing the Federal Education Budget by $2 billion in FY 1984 would also support a tax credit of a comparable amount for parents sending their children to private schools. In view of the fact that over 40 million students are enrolled in private school while only five million are enrolled in private schools, AFSCME believes it would be more sensible to direct federal funds to public education programs which are proven, cost effective, and designed to enhance our commitment to equality of education for all.

Serious constitutional questions have been raised on tuition tax credits. Eighty-five percent of all private school students in the United States are in schools with a religious affiliation. Since religious schools or parishes would be beneficiaries of tax credits, federal dollars would tend to advance and foster religion at public expense.

The anti-discrimination provisions of S. 528 are weak. Though the bill makes racial discrimination unlawful, it shifts the burden of policing violations from the federal government to individuals. Penalties are mild and thus will not effectively deter discriminatory practices. Additionally, discrimination on grounds other than race is not prohibited.

Most importantly though, AFSCME believes tuition tax credits undermine this country's traditional system of universal public education. The credits would give private schools an unfair advantage over public schools.

The Congressional Budget Office has estimated, for example, that with a hypothetical $250 refundable tax credit for elementary and secondary education tuition payments covering 50 percent of tuition costs, about 42 percent of the funds would flow to families with incomes greater than $30,000. Only 16 percent would go to families with incomes less than $15,000.

Tuition tax credits represent an unfair and dramatic shift in the federal funding of public education. In August 1982, the Council of the Great City Schools and the American Association of School Administrators jointly issued a report entitled "The Effect of Tuition Tax Credits on Urban Schools." The study of 65 large school districts in 29 states indicated that Administration education policies will have reduced Federal aid to public schools on the average from $206 per student to $105 per student by 1985 -- a drop of 49 percent. Over that same period, the study reveals, Federal aid to private schools through tuition tax credits would climb from an average of $43 per student to $329 per student -- an increase of 665 percent. The study also revealed that tax credits will result in major regional differences and that taxpayers in areas with fewer private schools will see disproportionate amounts of their tax money going to areas with a concentration of private schools.

In conclusion, AFSCME believes that tuition tax credits are economically unsound, are unconstitutional and discriminatory, and represent bad public policy. We therefore urge members of the Senate Finance Committee to oppose S. 528.

STATEMENT FOR THE RECORD

ON

S. 528, THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983

BEFORE THE

SENATE COMMITTEE ON FINANCE

SUBMITTED BY

AMERICAN ASSOCIATION OF COMMUNITY AND JUNIOR COLLEGES
AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES
NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES

April 28, 1983

On behalf of 1,600 public two and four-year postsecondary institutions enrolling 80 percent of the students currently enrolled in higher education (nine million students), we appreciate this opportunity to submit for the hearing record the views of our members on S. 528, the Educational Opportunity and Equity Act of 1983.

The public sector of higher education is unanimous in its opposition to any tax credit legislation. The National Association of State Universities and Land-Grant Colleges (NASULGC), in an official Board position, has stated that tax credits are regressive, unnecessary and costly. The American Association of State Colleges and Universities (AASCU) has voted to urge rejection of any tax credit legislation. And the Joint Commission on Federal Relations of the American Association of Community and Junior Colleges and the Association of Community College Trustees has taken a stand against tuition tax credits as a matter of public policy.

In short, all three associations are on record opposing tuition tax credit legislation, particularly those which would provide a credit for postsecondary education. Although the legislation before you only provides a credit to families who choose to enroll their children in private elementary or secondary schools, we are concerned that this initiative would lead to tax credits for higher education, as President Reagan and other supporters have indicated. Thus, we totally oppose the concept on any level of education -- elementary, secondary, postsecondary or graduate. We believe it to be unsound economic and education policy.

At a time when we are experiencing critical budget deficits, we feel that S. 528 is extremely ill-timed. The proposal is projected to cost billions of dollars in lost revenues -- a cost that our nation simply cannot afford. Congress has already cut federal aid to education and social programs by 30 percent in the last three years in an effort to reduce the federal deficit. The additional revenue lost to tuition tax credits could impose further, even more drastic cuts on these programs in the future. Also, at a time when this administration is attempting to limit Federal education spending to the most needed in our society, it is absolutely ludicrous that this legislation would assist families with up to $60,000 income.

From an educational policy standpoint, S. 528 is totally lacking in merit. The Federal government simply should not be in the business of providing a tax credit to wealthy families who can afford to send their children to private schools. This policy would imply and, in fact, endorse the rejection of our national philosophy of a strong public school system and would undermine continued support for it.

Moreover, S. 528 does not include a refundability provision. In order to be eligible for a credit, a taxpayer would have to have an income tax liability at least equal to the amount of the credit. This provision effectively eliminates participation of many low-income families who would not be able to benefit from the credit even though they might have children attending private schools.

We are also concerned about the meager non-dicrimination provisions contained in S. 528, which are supposed to provide assurances that the tax relief afforded would not be used to promote racial discrimination. In our view, these assurances are extremely tenuous and could easily be circumvented by some institutions considering the bill's perfunctory enforcement provisions. These particular provisions must be rejected by the Committee in favor of a more straight-forward and explicit prohibition against discriminatory practices.

In sum, Mr. Chairman, we strongly urge you to reject S. 528 and any other tax credit initiatives which come before your committee in the future. The Federal government needs to support the educational opportunities provided by public institutions at all levels of education. In our view, tuition tax credits would seriously erode America's commitment to public education and in doing so, would jeopardize the future educational and economic needs of our nation.

Contact: James W. Skillen
Executive Director
202-429-0244

TESTIMONY PREPARED FOR PRESENTATION BEFORE THE SENATE FINANCE COMMITTEE IN SUPPORT OF THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983

Mr. Chairman:

On behalf of the Association for Public Justice, I want to thank the Senate Finance Committee for the opportunity to offer this testimony in support of the Educational Opportunity and Equity Act of 1983 (S. 528). The Association for Public Justice is a non-denominational association of Christian citizens that is working to promote justice throughout the public domain.

THE RESPONSIBILITY TO EDUCATE

The Association for Public Justice supports this bill because a policy which promotes greater opportunity for educational choice recognizes the primary right of parents to select the kind of education they desire for their children. This fundamental right has been forcefully stated in the United Nations' Universal Declaration of Human Rights (Art. 26, 1948) and the Declaration of the Rights of a Child (Principle 7, 1959).

At present, the United States has only a *limited* form of freedom of choice in education. As a democratic society we can be thankful that the 1925 Supreme Court decision in *Pierce vs. Society of Sisters* guaranteed the right of parents to send their children to non-public schools. But while parents in the United States are not forced to send their children to public schools, they must "pay" extra in the form of tuition for freedom of choice. This freedom comes, quite literally, at a very high price. It is a price completely beyond the reach of the poor and also an increasing number of middle class citizens.

For many parents the decision to send their children to schools which teach a world and life view consistent with the values of the home is one of conscience and religious conviction. The basic question before the Congress is whether only the parents who send their children to public schools should receive financial support, or whether parents who send their children to non-public schools should also receive some financial assistance since they too pay taxes for education.

The Association for Public Justice affirms that in a pluralistic society the principles of public justice require of government an equitable handling of the goods, services, welfare, protection, and opportunity that it controls, without penalty or specific advantage to any person, group or institution due to religious, racial, linguistic, sexual, economic or other social and individual differences. The present public funding policy for education by the federal, state, and local governments does not measure up to this test of a truly democratic-pluralistic, governmental policy. Passage of tax credit legislation will help to alleviate this injustice by beginning to make it possible for every parent and child to choose, without economic discrimination, the kind of education they desire.

Our support for tuition tax credit legislation should not be viewed, then, as a kind of special pleading for one particular group of citizens. Our aim is liberty and justice, a measure of equity and fair play, for every individual and group in the United States. Every individual and group in society deserves impartial treatment as a basic civil right, not only politically and economically, but also in education.

QUALITATIVE DIVERSITY IN EDUCATION

Some support tax credit legislation with the argument that competition among different kinds of schools is necessary in order to guarantee quality and progress in education. We would agree that diversity rather than monopolistic uniformity is a better guarantor of educational quality. If those of us who are concerned with education want solutions to the growing number of problems and declining quality in education, then we should support measures that will encourage qualitative diversity in education. Some fear that encouraging a healthy diversity of schools through tuition tax credits will lead to the end of fair and free education for all. APJ believes that such a policy will mean the enlargement of public care for education and opportunity. Government at all levels should continue to pay close attention to all aspects of educational need so that justice is done to every child who needs shcooling. But this should begin with a fuller recognition of parental responsibilities for younger children and of educators' creativity. If the schools which now receive a disproportionate share of public funding cannot offer a sufficiently high quality of education to attract that proportion of support from parents and students, then surely we have a right to question the legitimacy of that sytem of public provision for education. APJ is not calling for a system that will threaten educational opportunity for every child; we advocate just the opposite, namely, a governmental guarantee of genuine opportunity for students to go to the school of their choice without the threat that any child will suffer discrimination. We specifically support the non-discriminatory provisions of this bill.

However, the concern of APJ goes beyond the promotion of anti-monopolistic diversity in American education. The basis of our support for qualitative diversity ineducation is to be found in our understanding of the nature of education and the task of government. We believe that the policies of government should be founded on the recognition that the ongoing development of human culture can thrive only in responsible freedom. Government therefore has no authority to direct society by attempting to gain control of the internal life of non-political communities, institutions, and organizations. This conviction has been implemented in our history in the case of certain other institutions and enterprises. The disestablishment of the church was carried through on grounds that the government ought not to interfere with the practice of religion. There is strong opposition in the United States to the idea that government should control the internal life of ecnomic enterprises. But somehow government establishment of schools has not been challenged by the majority of Americans in the last one hundred years. In fact, the conviction that education is the original and proper responsibility of local, state, and federal governments has become so ingrained that nearly all Americans speak of independent schools as "private" or "non-public" even though they render the same public service that government schools render. Why do we assume that governments have an original right to establish and operate schools when we reject their right to establish churches and to control the major economic enterprises of our society?

THE SUPREME COURT AND EDUCATIONAL FREEDOM

To answer this question we would have to examine several important dimensions and characteristics of American history and of the United States Constitutional structure, including the Supreme Court's legal bias against non-public schools in favor of state schools based on a faulty interpretation of the First Amendment to the Constitution. While the federal government acknowledges both the primacy of parental responsibility in education (as noted earlier, in the U.N. Universal Declaration of Human Rights, Art. 26; the Declaration of the Rights of a Child, Principle 7; and the U.S. Supreme Court decison, Pierce vs. Society of Sisters, 1925) as well as the right of citizens to exercise their freedoms of speech, assembly, and religion (see the First Amendment to the Constitution), nevertheless, the laws of the land that hold for education only respect parental responsibility and civil freedoms within a context predetermined by governmental primacy. Our basic principles say that citizens have an original right to freedom of speech, assembly, and religious practice, and that parents have an original right to educate their children, but we have given to our governments preemptive rights over parents and free citizens in the field of education, a preemption which is only slightly mitigated by allowing private schools to exist at their own expense.

The Supreme Court has sustained this contradiction by an appeal to the now generally accepted distinction between the "religious" and the "secular." But this distinction, as usually made, cannot do justice to either the First Amendment or the rights and responsibilities of such institutions as families and schools. With respect to education, the Supreme Court has assumed (without justification) that governments have a prior monopoly in the secular realm and that churches and similar institutions have a monopoly on religion. Families and schools, as institutions, are not adequately recognized at the start as having any standing in regard to what is religious and secular. From that starting point, the Court has then consistently argued that most governmental aid to religious schools violates the First Amendment's prohibition against government establishment of religion. The government can legitimately finance its own schools since they are, by governmental definition, "secular" and not religious, but it cannot aid "religious" schools since, by the government's definition, they are not "secular" but religious.

But more than one Justice on the Court has pointed to the problem with this one-sided stance of the Court, since it actually interferes with the other religion clause in the First Amendment that mandates the free exercise of religion, and because it puts full government support (an establishment) behind whatever outlooks, philosophies, world views, moralities, and religions happen to be dominant in the public schools at any given time and place. The commitments and moralities of the public schools are thus imposed on all students regardless of the religious and moral disposition of their parents and themselves. (See Stewart's dissent in Schempp 374 U.S. 203 at p. 313, and Douglas in Lemon 403 U.S. 602 at p. 630.)

The error comes in the initial assumptions. The Court has never accounted for its non-neutral use of the terms "religious" and "secular". If it would attempt to give such an account, it would discover that churches and so-called religious bodies are not the only "religious" institutions in our society. Public schools, in attempting to be "secular", cannot at the same time be neutral, and thus they reveal their secularistic commitment and viewpoint. In another connection, the Court has properly acknoweldged that traditional religious commitments are not the only ones that must be protected under the religion clauses of the First Amendment. All kinds of commitments, including commitments to irreligion and secularism, must be protected under the First Amendment. (See Seeger 380 U.S. 163; Welsh 398 U.S. 333; and Torcaso 367 U.S. 488.)

If the Court would give an account of its use of the terms "religious" and "secular", it would also discover that the government is not the only or even the primary "secular" institution in our society. "Secular" means "of or pertaining to this world," and all families and schools, no matter how religious or irreligious, no matter how committed or uncommitted, are "secular" institutions -- they pertain to life in this world. With regard to parental responsibilities and education, therefore, the religious/secular dichotomy is useless and misleading. All schools are both secular and religious.

Ever since the Everson and McCollum cases in 1947 and 1948 (330 U.S. 1 and 333 U.S. 203), however, the Supreme Court has been supporting governmental primacy in education and thereby discriminating against the non-state schools that have been established by groups of parents, by churches or by other organizations on the ground that government schools are purely secular and other schools are fully or partially religious. There is nothing in the Constitution, however, that can justify this distinction or the discrimination that results from it since the prior rights of religious freedom and of parental responsibilities require that the government should do nothing that infringes these rights.

Here is the truly serious problem that we confront today. The different levels of government in the United States count on parents to nurture their children through to a healthy and stable maturity. These governments realize, moreover, that society cannot survive without parents fulfilling their responsibility and without the moral training that religious institutions and other free associations help to provide for the young people of our society. But precisely these rights and freedoms are violated by our present system of government preemption in education -- preemption of the rights to practice religion or irreligion freely and to train up children in the way that parents believe is best. Parents clearly do not have equitable freedom to train their children within the framework of their own convictions, because at a very early age in the life of children, the government steps in with its preemptive claim to determine the structural framework of education within which parents must fulfill their responsibilities. The social contradiction is that government expects parents to fulfill their responsibilities, but it turns around and takes away an essential part of parental freedom which is necessary for the fulfillment of those responsibilities.

GOVERNMENT RESPONSIBILITY

This is not to say that government should have no interest in or responsibility for education. Our argument is not one of anarchic libertarianism which opposes governmental authority at every turn. A political community characterized by public justice requires that government exercise its full and proper authority in the public domain. A free economy cannot mean "hands off" irresponsibility on the part of government. Free religion does not mean governmental disregard for religion. And freedom in education does not mean that government should leave schools alone. Allowing schools to be schools rather than departments of the governmental bureaucracy means simply that the government should exercise its oversight in a way that allows parents and educators to develop the schools of their own choosing without penalty or special favor to any one school or school system.

Any number of educational concerns should occupy the energies of local, state, and federal governments. Racial discrimination should not be allowed to jeopardize the right of any child to go to the school of his (or his parents') choice. Poverty should not be allowed to keep some children from selecting the best education that they would desire. Government's responsibility for education means that it should not allow any injustice to rest at the foundation of educational opportunity as is now frequently the case. With tuition tax credits and other means of establishing equity, government will be in a better position than at present to consider such elements of justice in the midst of educational diversity. Having begun to overcome its own unjust funding and establishment policies, it will be able to deal with all schools more fairly. If governments see the need for maintaining government-run schools, then such activity should not lead to any special advantage for those schools or to any penalty against the choice of non-government schools.

Tax credit legislation will certainly not do all that is necessary to establish full justice in the area of education, because even a substantial tuition tax credit from the federal government to parents will not be enough to give the non-governmental schools equal standing alongside the public schools. Nevertheless, such legislation is one of the most important and valuable steps that can now be taken in the direction of equity and justice in education. It will give tremendous encouragement to those who want justice, who are oppressed by majoritarian and financial limits to their parental responsibilities and conscientious convictions. Justice requires that governments at all levels act now to protect and enhance freedom of choice in education.

COUNCIL FOR AMERICAN PRIVATE EDUCATION
1625 Eye Street, NW, Washington, DC 20006

Testimony on

The Educational Opportunity and Equity Act of 1983 (S. 528)

for

U.S. Senate Committee on Finance

Michael T. Ruiter, Ph.D.
Executive Director
Christian Schools International
and
Vice President
Council for American Private Education

April 28, 1983

Christian Schools International (CSI) and the Council for American Private Education (CAPE) both welcome the opportunity to participate in these hearings on The Educational Opportunity and Equity Act of 1983.

CAPE is a Washington-based coalition of 15 national organizations--Christian Schools International is one of those organizations--serving private schools at the pre-school, elementary, and secondary school levels. CAPE involves approximately 16,500 schools in which nearly 4.2 million school children are enrolled. These organizations, by enrollment, represent more than 85 percent of America's private schools. Member organizations are nonprofit and subscribe to admission policies which do not discriminate on the basis of race, color, or national or ethnic origin. As a representative of such schools, I am pleased to speak on behalf of the bill now under consideration by this Committee.

The American tax system is designed to do many things besides just collecting money. The system helps stimulate investments, farming, business, charitable giving, and a lot more. Through such benefits as tax credits, taxpayers are allowed benefits for certain contributions which serve a public function; things such as political contributions, children's day care, and energy conservation. In some states, tax credits are given for contributions made to private colleges.

The purpose of tax credits is to encourage taxpayers to use personal funds in ways which help improve job opportunities or perform other public benefits. Even without tuition tax credits, the private school parents' use of personal funds to educate their children currently saves the American taxpayers approximately $12.5 billion a year. These parents serve a significant public function in the process: educating their children. That is a considerable contribution to the public good and surely warrants a tax credit benefit.

In addition to the encouragement that tuition tax credits give to parents so they will continue providing for the education of their children through private means, tuition tax credits also speak to certain time-tested American traditions, including a personal liberty that should mean, among other things, an unfettered choice in education. Present policy and law does not adequately speak to this liberty in education.

All families have the constitutional right to send their children to the school of their choice. For the vast majority of private school families, this choice is made for religious reasons. It is a choice made on the basis of deliberate, careful family priorities. Such a choice strengthens the active participation of citizens in the education of future citizens and therefore should not only be protected but encouraged. But the increasing cost of exercising any choice in education is putting an increasingly heavy financial burden on the majority of private school families. In too many cases this increased burden has effectively denied parents the liberty of providing an education for their children as their conscience dictates. The result is an inevitable reduction of liberty in education. Not only is liberty lost but all taxpayers experience increased tax burdens if private school families no longer can afford that liberty of choice. Therefore, it seems fiscally and democratically prudent to insure that liberty in education be encouraged by keeping choice affordable for all citizens.

The tuition tax credit bill you are considering represents a modest effort to relieve some of the private school family's tax burden. It also will give new educational opportunities to some who thus far have been unable to share in these opportunities, namely, those who have been deprived of liberty in education because they are poor. A tax refundable addition to this tuition tax credit bill would benefit the poor even more.

Let me emphasize that CAPE members advocate strong public schools. We agree with James S. Coleman who believes a tuition tax credit will not significantly affect public school attendance.. We do not believe that tuition tax credits will negatively affect public school funding. Obviously, public school funding stands or falls on its own merits; it does not depend on individual tax deductions or on other federal expenditures. In all likelihood, federal and local funds for public schools will be increased if tuition tax credits become a reality. Private school people likely would be more able, hence more willing, to support local and state public school tax proposals when they receive a form of tax relief through tuition tax credits for their private school support.

It is difficult to demonstrate how tuition tax credits will diminish public school quality. It is more easily shown that passage of the bill will only heighten the resolve of the public schools to serve their public even better. Public schools will not be diminished by tuition tax credits because most Americans prefer public school education.' A $300 tax credit is not going to change that preference.

Some have said that the cost of tuition tax credits is too great. The estimated $245 million cost the first year is more than offset by the $310 million all taxpayers saved this year because of a one-and-one-half percent change in enrollment to private schools. The motivation that a tuition tax credit would provide for other parents is very likely to increase that $310 million savings to amounts equal to or greater than the $526 million estimated second year cost or the estimated $754 million third year cost. In other words, in terms of cost to taxpayers, the tuition tax credit likely will be more than offset by the shift in enrollment even if that shift continues only at its present rate. The most logical approach to reduce taxpayers' costs may well be to increase the tuition tax credit, and by doing so motivate even more savings to taxpayers.

One of the most troubling aspects of this legislation is the extent to which it is engendering hostility between public and private education. The enmity and misunderstanding between those two sectors is as long as it is unfortunate. I speak for the leadership of my organization, Christian Schools International, and of CAPE when I say that we wish nothing but success to our colleagues in public education. Public schools belong to us, too. Many of our children attend them. We want quality public schools. The tuition tax credit is not at all an anti-public schools measure. If it were, we would not be interested in this bill.

Both public and private school supporters should keep in mind that both sectors are part of an amazingly diverse and rich national system of schools. They differ in every possible way--in degrees of autonomy, financing, goals, governance, enrollments, and pedagogy, to name only a few of the most important differences.

To make this country's school system as vigorous as possible is to reinforce the strengths of each of its parts. For all serve the good of the whole, and, as does no other educational undertaking anywhere on earth, the whole serves the diverse and voracious faith of our pluralistic society in the value and power of education.

In the light of these benefits to education as a whole, to the cities themselves, and to the democratic principles of liberty which this bill would foster, any objections to this bill do not seem significant at all. We hope this Committee and the Congress will recognize the overwhelming benefits tuition tax credits will give to the nation and to the principles it holds so dear. We are convinced that time will prove that the enactment of this bill not only will benefit the parents of some 5 million American students but also will benefit the entire nation in a multitude of ways.

We support the Educational Opportunity and Equity Act of 1983 because it advances the cause of justice, of pluralism, and of equal educational opportunity, and it strengthens a national network of schools, public and private. For these reasons we seek--we urge--your wholehearted support of this bill.

Testimony

by

Leonard DeFiore, Ed.D.

Introduction

I am Dr. Leonard DeFiore, Superintendent of Schools for the Archdiocese of Washington. Our school system, 115 schools, nearly 38,000 students is typical of many Catholic school systems throughout the United States. Our students come from backgrounds representing all strata of society. Approximately one-third of our students are black and nearly 20 percent are non-Catholics. In the District of Columbia itself, 70 percent of our students come from minority backgrounds, many of whose parents sacrifice mightily to have them attend our schools. The cost of our schools is modest at best--the per pupil cost in the elementary schools is nearly $700 per year and approximately double that in the high schools. Even such a modest cost, especially for a low or middle income family with several children, can be a severe financial burden. A 1979 study of inner city Catholic schools, which included Washington, D. C., indicated that more than three-fourths of the families had incomes under $15,000. You can imagine how much of a burden even modest tuition costs are for these families. It is to help these low and middle income families that I urge this committee to vote favorably on S. 528 "The Educational Opportunity and Equity Act of 1982."

S. 528 - A Parent's Rights Bill

This bill is not an educational bill; it is not primarily even a tax bill; in fact, it deals principally with a civil rights issue, namely parental rights. As Senator Moynihan observed during the 1978 debate, "this is a battle for parents rights in education, perhaps the last frontier of civil rights in this nation." This tuition tax credit bill is a response to the quest for that public tax policy which would best help parents perform their God-given and constitutionally protected right and duty as primary educators.

Although it is self-evident that the child does not belong to the state, it was necessary for the Supreme Court in its 1925 Pierce ruling to defend a corollary of this truth by explicitly guaranteeing parents the right to "direct the up-bringing and education of children under their control, and the right to satisfy compulsory education requirements in either a public or nonpublic school."

During the past 57 years, that landmark decision supporting freedom has become a hollow victory. As education costs increase and income taxation rises, more and more poor and middle income families must forfeit their constitutionally protected right of free choice in exchange for a free government provided education. Children whose parents cannot afford to pay twice for their education are being coerced to conform to the moral and religious orientation of government schools. Freedom of educational choice has become a function of wealth--a privilege of the wealthy rather than a protected right for all.

Now it may be true that a few wealthy doctors and corporate executives may benefit from tuition tax relief (as they now do from free public schools). However, the vast majority of beneficiaries will be middle and low income families. Most importantly, it would give the poor the same rights as the not poor--the ability (which differs from the theoretical right) to exercise their first amendment right to religious freedom. It is silly, under present circumstances, to tell the low and moderate income family that they have a government protected right to educate their children in a religious school but that the government will not permit them to use their taxes for that purpose.

In fact the United States remains virtually the only country outside the totalitarian orbit which deprives private school families of education tax funds. Let me share with you a list of countries in which children cannot study religious and moral values in school, or, if they do, they suffer the loss of tax funds for their education in secular subjects.

Albania
Bulgaria
Ceylon
China
Cuba
East Germany
Hungary
Republic of South Africa
Russia
Turkey
UNITED STATES
Yugoslavia

S. 528 corrects that inequity and makes that freedom real for all.

Tuition Tax Credits - No Threat to Public Schools

"The sky is falling! The sky is falling!" So screamed Chicken Little in the familiar children's fable which does so much to teach children the folly of misplaced hysteria. I am reminded of the fable when I read some of the comments of those who oppose a tuition tax credit bill.

For example, in a 1980 column entitled, "Life or Death for Public Education - The Menance of Tuition Tax Credits," Albert Shanker, President of the American Federation of Teachers (AFT) argues that "the effect (of tuition tax credits) would be the destruction of public education as it has existed in this country for over 200 years."

Besides being hysterical far beyond even extravagant exaggeration, the statement is historically inacurrate: 200 years ago, there were no public schools. All education at that time was under private auspices.

As this proposed legislation makes its way through Congress, we will likely be bombarded with an increased volume of such hyperbole, the primary purpose of which is to divert attention away from the main issues at hand, namely, parental rights and social justice.

It is unfortunate that the discussion of the merits of tuition tax credits too often degenerates into a public vs private education debate. I reject such a false dichotomy. I assert rather that the financial health of each system is largely independent of the other.

I agree with the statement of Senator Moynihan on September 24, 1981, when he introduced his bill. "...I do not believe that a tuition tax credit will harm them (public schools) or in any way diminish their ability to provide high quality education to the vast majority of American youngsters The real danger in my view, to the traditional American school system, is that the non-government schools will disappear as an available option to families of average incomes." Therefore, tuition tax credits should not be seen as a threat to public schools; not one dollar less will be spent on public education as a result. Nor are they subsidies to encourage parents to remove children from public schools which now enroll 90 percent of the students; the credits will be too limited for that.

Those who advance this position raise a curious argument. What they seem to be saying is that the public schools are so bad that for just a small incentive, parents would abandon them.

Three points here: First, such an exodus is unlikely; the majority of parents are satisfied with the public schools. Certainly a small tuition tax credit would not be enticing. Secondly, there is no room in existing private schools for large scale expansion. Probably, private school capacity is barely sufficient to accommodate what had been its maximum share of school enrollment--13% in 1966, a rate at which, by the way, no one argued that they were a threat to public schools. Third, the current system of government grants and loans which apply equally to students attending public or nonpublic colleges has caused no shift to private colleges. Therefore, it is unreasonable to assume that a tuition tax credit will not alter enrollments at the elementary and secondary level.

There are at least two current situations which give us a hint about the possible impact of a tuition tax credit.

The state of Minnesota has had a tuition tax credit and/or tax deduction program for the last ten years. A careful review of the enrollment pattern in the state over that period indicates that there has been no significant change in enrollment patterns.

In addition, Louisiana has had an educational tax credit for several years, again with no reported adverse effects on public schools. While a sample size of two is not conclusive, I submit it is more instructive than the hysterical ranting about the destruction of the public school system.

Finally, it is claimed that private schools will attract the best students. This is not supported factually; a 1971 study in Chicago found that I.Q. scores were higher in Chicago public schools than in the Chicago parochial schools. Further, in the Washington, D. C. Catholic schools, test scores of entering students indicate that as a group they are of average ability.

In fact, tuition credits will strengthen the public sector by encouraging pluralism and consumerism in education. Public education is threatened more by a lack of competition and accountability than by private education which acts as a stimulus to achievement in both sectors.

Ideally, public and private schools should be seen as partners, not adversaries in education. Those who construct false dichotomies to indicate otherwise do a great disservice to all education and to the families whose children we serve.

Tuition Tax Credits: Not Unconstitutional; No Church-State Issue

There has never yet been a Supreme Court test of this kind of bill. What's more, there is ample evidence that this bill does not violate the intent of the Founding Fathers.

One often hears that this country was founded on public education, but that is not true. There were no tax-supported public schools in the United States until after 1820. Before that, most grade schools and high schools were church run, even though they were open to anyone who wanted to go. Local governments levied all kinds of taxes--on liquor, on gambling--and gave money to the churches to operate these schools. That was direct support. Obviously, the Founding Fathers would not have considered tuition tax credits unconstitutional. In addition, during past, extensive Senate and House hearings, constitutional experts testified that a broadly-based program of federal tuition credits would withstand any Court challenge. Since credits, aid parents, not religious institutions, the church-state issue is completely avoided. The issue is simply one of parent and student benefit through reduction in the parent's tax liability. It is no more a constitutional issue than a deduction for a church contribution for a stained glass window.

In any event, Congress should pass the bill and let the Courts wrestle with the sometimes competing claims of the Establishment and Free Exercise clauses of the First Amendment. However I must admit some scepticism with the notion, as we stand on the threshhold of the 21st Century, that American freedom is threatened by religious establishment. How long must we live with 18th Century ghosts?

S. 528 Prohibits Racial Discrimination

Tuition tax credits will not encourage racist schools since they will not be available to families which patronize schools which are not in compliance with existing civil rights laws and regulations and additional provisions of this bill. Instead, they will have the opposite effect by making it ossible for low income families, black and white, to enjoy the freedom of cational choice. Professor Nathan Glazer of Harvard has predicted that the group which would benefit most from tuition tax credits will be inner city minority families. And they seem to be aware of this. A *New York Times*/CBS News survey in 1981 (*NY Times* 9/28/81) found that blacks support tuition tax credits by a margin of 2-1.

S. 528 Is Not Expensive

Even if funded at the maximum proposal, $500, tuition tax credits for elementary and secondary students will result in parents keeping approximately $2 billion for tuition purposes. This pales in comparison to either the annual federal budget, nearly $800 billion; or the amount saved the taxpayer annually because private schools exist, at least $15 billion.

Tuition Tax Credtis: Are They a Subsidy of the Wealthy?

Tuition tax credits, like free public education, are no "ripoff" for the wealthy and in fact will greatly benefit low and middle income families. In December 1980, the U. S. Department of Education published data which indicates 27% of private school parents earn less than $15,000 a year

(30% is national average) and 80% earned less than $30,000 a year--hardly what one would call wealthy.

Further, a 1979 study of 20,000 students in 81 Catholic schools in eight cities across the country indicates that 77% of the families reported incomes of less than $15,000 with 50% below $10,000! More than one-half of the students in these schools were black and a similar percentage, non-Catholic.

Tuition Tax Credit: Establishment Opposition

The battle over tuition tax credits will be fought mostly in the political arena, since the key issue at bottom is power and control over the educational dollar. The muscle arrayed against tuition tax credits is considerable: NEA, AFT, AASA, NSBA, etc. That the leadership, at least of NEA and AFT, perceive tuition tax credits as a threat is quite natural. They should be opposed because the responsibility of union leaders is to protect the interest of the union members against all perceived threats, however remote and whether real or imagined.

The hard truth, of course, is that education has increasingly come under control of influences which are more adept at lobbying than teaching.

When these leaders become just one more special interest group whose priority is protecting their vested interests even at the expense of the people they serve, then we must view with suspicion their misgivings over tuition tax credits. When they call a tuition tax credit a "life or death issue" as does the AFT, one must wonder if they mean for the country or for the AFT.

Conclusion

Ultimately, economic, political and educational arguments are of secondary importance. This is a justice issue, a human rights issue, a parental choice issue. While we rightly promote the rights of individuals in jobs, health, housing, etc., we have yet to find a way to protect one of the most basic rights of all--the right of families to educate their children according to their conscience and to choose the religious, cultural, and philosophical values for their children's education. The tuition tax credit provides an acceptable answer by providing a rightful share of their tax dollar to parents who choose other than government schools for their children. What could be more in keeping with the essential values and processes of our country? What could be more American?

Certainly, after spending more than $100 billion annually on public schools, after nonpublic school parents save taxpayers $15 billion annually; it is only right and just that America allow these parents to keep a small part of their earnings to educate their children in the way they deem appropriate. In short, a tuition tax credit is good economic policy, good public policy and good educational policy.

As one of our inner city parents said to me recently, "I can give my children nothing more valuable than a good education." S. 528 brings that hope closer to reality.

Statement of William E. Laird

Department of Economics
Florida State University

"Educational Opportunity and Equity Act of 1983" S.528
April 28, 1983 Tuition Tax Credits

Recent decades have seen a long term decline in competition in the field of education at all levels. Public schools have achieved something rather close to monopoly now with over ninety percent of elementary and secondary students enrolled in public schools. The long-term rise in public school enrollments vis-a-vis private school enrollment has diminished competition in education and has been accompanied by increasing criticism of the public schools. There is concern about the quality of education produced and the lack of discipline in the classroom. There is violence and fear of violence in many schools, both in the classroom and on the grounds. Test scores have declined. Many parents feel they have lost all control over the education their children receive while others believe the schools try to accomplish ends for which they are not well suited. Some believe the quality of leadership in many school boards has declined in recent years. Even staunch defenders of the ideals of public education admit things are not going as well as they should in these schools. Things have been getting worse rather than better and the public perception of this fact has grown. A National Commission has just expressed its concerns about the state of education in America.

There is certainly more than one way to diagnose these complex problems and obviously alternative ways to go about improving education. The tuition tax credit approach of S.528 holds promise because it will provide a new set of incentives to both the public and the private schools while widening the choice of consumers and encouraging the flow of private capital into education. Tuition tax credits will accomplish these things in a rather direct and simple fashion, without creating a new agency.

What will be created is a new competitive force in an area where public policy has, sometimes deliberately, sometimes inadvertently, reduced competition. The public interest requires quality education, but certainly does not require that public schools progressively monopolize education. On the contrary, monopolization in this area can be expected to have many of the same effects monopoly ordinarily has in other areas. The interests of consumers are neglected, cost are higher than need be and operations become bureaucratic. Some would argue these effects are already evident in many public schools. The public interest is served by monopoly only in those rare cases of natural monopoly - where competition is not feasible because of the technology of production. Education is not a natural monopoly. On the contrary, competition is entirely feasible in education at all levels. The existing financial arrangements account for the near-monopoly enjoyed by the public schools.

Tuition tax credits provide one means of encouraging competition in education. By providing a partial offset to the tuition costs of private schools, tax credits will broaden the range of choice many parents now face in educating their children. At present only those who can afford public school taxes plus the full cost of private tuition have the option of private school. They pay twice, and this naturally limits the parent's choice while it handicaps private schools. This financial arrangement also lessens the pressure for performance by the public schools. They have something close to a captive audience.

Some fear tuition tax credits will destroy or greatly damage the public school system. Certainly many of those with a vested interest in the public schools will be alarmed at the possibility of tax credits becoming a reality. This alarm should be recognized for what it is and not be taken too seriously.

The opponents of tuition tax credits defend the record of the public schools and generally express alarm at the possibility of there being a significant shift of students from public to private schools. The alarm expressed is only *partially* reconcilable with the defense of the public school system. If the public schools were as strong and successful as defenders have claimed at these (and similar) hearings, there would surely be little cause for genuine alarm at the prospect of parents having a greater range of educational choice. The great majority of students would remain where they are now.

There is very little chance of these fears coming true regarding the public schools being greatly damaged. They will be challenged, but the worst will not happen because the public schools should be as capable of responding constructively to new competitive developments, as other segments of the society. Tax credits should strengthen the private schools and allow some growth in this area. They will enable some parents to exercise a choice they cannot afford at present. The public school establishment will respond in a positive fashion to this development. The *opportunity* of freer movement of children between public and private schools will provide the most direct form of incentives to local school boards and school officials. *The movement of a relatively few students will quickly gain their attention.* This movement is a challenge they would *much prefer* not to face and that is understandable. Nonetheless, such competition and *potential* competition would almost surely have a positive effect on the motivation of those with a vested interest in public schools.

The public schools certainly would survive the advent of tuition tax credits. There can be no doubt on the question. However, some of the attitudes and priorities of the public school establishment may not survive the more competitive educational world that would be fostered by tax credits. A change in the perspective of the public school establishment could be one of the more important benefits of the plan. Both time and resources may be spent in better ways. The long run effects could be quite positive. Competition would generate a new emphasis on quality and achievement. This is one reason for believing tuition tax credits ultimately could strengthen public as well as private schools. It is important to remember that neither public nor private schools are ends in themselves, but only a means of educating each generation. The questions of effectiveness and efficiency must be considered.

Tuition tax credits offer the possibility of lowering the social cost of education. The average costs of education per student is significantly less in private than in public schools and this has been true for a long time. This difference in cost is not fully explained by differences in student body or programs. A marginal shift of students from public to private should result in some gain in efficiency and the social option of lower average cost of education. The resources saved by this change may be used to enhance education or to provide for other public or private needs.

Tuition Tax Credits For Higher Education

The points raised thus far primarily concern elementary and secondary education. While other points could be raised regarding these levels of instruction, I would like to turn now to higher education.

Tuition tax credits for higher education will open choices to students that relatively few can enjoy at present. One concern is that in so many states the public universities are all so similar. They tend to be rather large, often impersonal institutions, and of course, they differ in quality. Undergraduate education oftentimes receives a low priority at these institutions, despite official protestations to the contrary. The fact is not all students do their best in such an environment. Obviously there is no one academic environment which is best for everyone. Personalities and interests differ and some are better suited to smaller four year colleges than to large universities. This is not so much a reflection on the typical state university as it is an admission of inevitable individual differences in temperment, ability, background and interests. Some would benefit from living in another region of the country, just as others would benefit from small classes rather than large lectures and many would prefer more experienced professors to graduate student instructors, although many of them are excellent. Some need more contact with professors than do others. Tax credits would provide a better opportunity for students to select the type of institution best suited for them.

Under present institutional arrangements in the financing of higher education it is difficult if not impossible for many students to spend only a few extra dollars to attend a school they (or their parents) consider better suited for their needs. Some can, of course, if the preferred school is another state institution within their home state. If the preferred school is a smaller private school some will not have the option they desire.

The point goes beyond the fact that some have their options limited by the existing financing systems. Higher education is deprived of the additional resources individuals would be willing to devote to obtain the education and environment they prefer. Tuition tax credits would provide choices for a much broader range of students and increase, to a degree, the flow of private resources devoted to higher education.

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Room SD 221
Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Dole:

The League of Women Voters of the United States is pleased to take this opportunity to express the views of our members on tuition tax credits for the record on the hearings on [redacted] held by the Senate Finance Committee on April 2[redacted]

The League of Women Voters of the United States, a non-partisan citizen education and political action organization, has members in all 50 states as well as the District of Columbia, Puerto Rico and the Virgin Islands.

The League has opposed tuition tax credits since 1978, when the League's national convention, consisting of more than 2,000 League leaders from across the country, directed the national board to oppose tax credits for families of children attending non-public elementary and secondary schools. Convention action was based on a two-pronged League position: support of equal access to education and support for desegregation as a means of promoting equal access to education.

The League reaffirmed this commitment by designating opposition to tuition tax credits as one of its action priorities for 1982 and 1983. In support of this action priority, League members across the country are writing letters to their members of Congress opposing tuition tax credits; meeting with members of Congress to discuss the issue, and organizing local educational campaigns on tuition tax credits.

The LWVUS has held a position in support of equal access to education since the early sixties, and has promoted it at the national, state and local levels through a variety of efforts. The League has supported a wide variety of federal programs enacted during the past two decades aimed at meeting the educational needs of the poor and minorities. Nearly every state League has studied the issue of school finance and is involved in identifying inequities in the ways in which schools are funded.

We have also worked for a strong federal civil rights enforcement role, including support for busing as an option for implementing school desegregation. Local League efforts in support of peaceful school desegregation have been constant and tireless--including filing court suits, establishing community coalitions and running rumor control centers.

The League's fundamental oppostion to tuition tax credits stems from our support of equal access to education and our concern that tuition tax credits would undermine our nation's commitment to public education. This concern is still foremost in the League's mind. Moreover, with our country facing such dire economic conditions, the budgetary implications of tuition tax credits make it an even more ill-conceived idea.

In prior detailed testimony before this committee the LWVUS has contended that tuition tax credits would inhibit equal access to education for all students, would add to an already swollen budget deficit and would create an educational caste system. Furthermore, tuition tax credit programs are inconsistent with our nation's commitment to promote school desegregation.

The proposed tuition tax credit program would benefit only a small minority of Americans who are significantly more affluent than the majority. Approximately 90 percent of all U.S. students attend public schools. The average income of families of all non-public school students is 37 percent higher than the average income of families of public school students. The LWVUS cannot support a program that would disproportionately discriminate against the poor and minorities.

For the above reasons, the League of Women Voters of the United States strongly opposes tuition tax credits in any form for any amount.

The League concurs with the testimony provided by the National Coalition for Public Education, of which we are a member, and of the Washington Bureau of the National Association for the Advancement of Colored People.

Sincerely,

Dorothy S. Ridings

Dorothy S. Ridings
President

DSR:bb/US

REGARDING: S.528

STATEMENT OF: National Association of Elementary School Principals
1920 Association Drive, Reston, VA 22091

Mr. Chairman:

The National Association of Elementary School Principals appreciates the opportunity to offer written testimony on S.528, the "Educational Opportunity and Equity Act of 1983," concerning the provision of tuition tax credits to parents who send their children to private schools.

The National Association of Elementary School Principals represents over 20,000 elementary and middle school principals throughout the United States. Our major purpose is to enhance the quality of education offered all elementary and middle school children. The Association offices are located in Reston, Virginia, at 1920 Association Drive.

Positions of the Association on various issues are determined by our Delegate Assembly, a representative body of members selected through the state associations. Association positions related to tuition tax credits are as follows:

"PUBLIC MONIES FOR PUBLIC SCHOOLS"

> "Believing in the doctrine of separation of church and state as provided in our Constitution and believing that every child and youth in our country is entitled to receive a full range of education services which meet his or her individual needs, the Association firmly supports the position that such services should be provided within the public school system, and that neither the service nor the system should be diluted by diverting public monies to support private schools."

"TUITION TAX CREDITS"

> "NAESP believes that the welfare of this nation is dependent on a strong public education system. Tuition tax credits reduce gross tax revenues and adversely affect financial support for public education.

> "While recognizing the contribution and unique value of private schools, NAESP is opposed to all proposals that would reduce financial support and consequently the potential for achieving a high quality of education in public schools."

These positions define the direction of our testimony.

Senate 528

Senate 528 proposes that Federal legislation should recognize certain premises. The first premise is that American society is strong because of its pluralistic nature. The true significance of pluralism in America, however, is that immigrants from many countries were free to maintain their cultural diversity because they were bound together by principles that all welcomed--the principles set forth in the Declaration of Independence and in our Constitution. A basic purpose of American education is to assure our nation a citizenry that understands those principles and remains bound together by them--not to stimulate potential diversion by the nation's children, and thus the nation itself, from a commitment to a unified and common good.

The stress of this proposed legislation on public/private competition and on a federal emphasis on fostering that competition is incomprehensible. The next logical step might well be something as equally absurd as a federal subsidy for private police and fire protection, to compete with the fire and police departments maintained by the states and the localities.

The legislation calls for competition as though each system--public and private--faced equal environments in which to compete. This is patently false. The private schools are not called upon to serve all children--or indeed any but a chosen few--or to abide by standards and rules imposed for the common good on the public schools by the will of the people and their elected leaders. Competition under different requirements is, we submit, no competition at all.

Moreover, at the same time that President Reagan is proposing a new Federalism that includes making state and local governments responsible for the governance and financing of many educational programs enacted by the Congress and supported with federal funds, S.528 calls for a federal subsidy to maintain religious and other private schools that will compete with (and divert funds from) the state and local mandate. Such inconsistency is not merely foolish, but promises long-range harm to the condition of American education and thus to the nation itself. This proposed action thus reflects internal inconsistency in the administration's domestic policies and does nothing to assure our citizens that federal support for the educational needs of all Americans is a firm commitment from a far-sighted government.

Another premise, that "persons of lesser means" would benefit from the legislation, is similarly specious. According to a report by the Education Commission of the States, "families with less than $15,000 incomes would get 15 to 30 percent of the credits" called for in the bill. For people who have such low incomes that they pay little or no income tax, such credits simply won't exist. Thus for many, many families of lesser means, this legislation offers no relief at all. S.528's "meaningful choice" of schools parents want their children to attend is thus essentially reserved for the wealthier families, who already are well able to exercise that choice and do not require this legislation.

Beyond its clear and shameful inequities, the tax relief promised in S.528 could very well lead to complications its beneficiaries might find unwelcome. Who would assure the quality and propriety of the schooling their children receive? Who would monitor adherence to fire codes and health standards? To what extent would a church-state entanglement necessarily become? Would the churches involved discover they had inadvertently acquired a partner? (It is worth noting that when day-care credits first appeared, the credit took one line on the income tax form; now it has its own two-page addendum.)

Proponents of the measure take the position that tuition tax credits would mean no reduction in federal revenues that could be used for public schooling but would be just a lucky break for certain families. That contention suggests the illusion that the pot is of infinite size, capable of being tapped endlessly. The fact is that tuition tax credits would mean a huge reduction in the amount of federal money available for education or anything else, and the public schools would be certain to suffer still further loss.

The fact is that the nation's private schools already receive sizable amounts of public funds--for transportaion, for testing, and for many other services. Add $300 per child in tuition tax credits to the list and the federal government will be in the strange position of providing appreciably more support for sectarian and other private schools than for the public schools.

The issue of equality of educational opportunity is only partially addressed by this proposal. The premise calling for this addresses only racial discrimination and avoids dealing with discrimination on the basis of sex or handicap. If this proposal would require all Federally mandated non-discrimination, it cannot specify race as the only element.

The administration has had much to say about excessive federal deficits and has called for unified action in eliminating them as a basic step in strengthening the nation's economy. No one is more interested in a strong economy than America's elementary and middle school principals, for professional and personal reasons alike. However, S.528, the administration's position, would take precisely the opposite course and add a brand new entitlement program--an ill-conceived, unjustified, harmful new barrier to economic recovery.

While superficially promising much, S.528 in reality is addresed not to the public interest but to the interest of a few. It is at odds with sound economic policy. Above all it threatens an institution--public education--that has been at the heart of this nation's industrial wealth, technological leadership, and exemplar to the world of the democratic ideal.

Mr. Chairman, we ask that this bill be abandoned forthwith.

Samuel G. Sava

Samuel G. Sava
Executive Director

May 2, 1983

NAE
NATIONAL ASSOCIATION OF
EVANGELICALS
OFFICE OF PUBLIC AFFAIRS/1430 K STREET NW/WASHINGTON DC 20005/(202) 628-7911

Statement of
Forest D. Montgomery
Counsel, Office of Public Affairs
National Association of Evangelicals
on
S. 528, the "Educational Opportunity and Equity Act of 1983"

For the last several years the leadership of the National Association of Evangelicals has been examining the tuition tax credit issue. This prolonged consideration culminated in the March 10, 1983, adoption of a resolution endorsing tuition tax credits. That resolution, which was passed by an overwhelming 91% of the voting delegates, reads as follows:

TUITION TAX CREDIT RESOLUTION

> The National Association of Evangelicals affirms its support of quality public education, encourages Christians to teach in the public schools, and urges Christian parents to work toward improving such schools. However, we recognize that many parents, exercising their God-given right and responsibility to educate their children, by conviction choose to send them to schools which teach Biblically-based moral values and a Christian world view. This choice is essential if "the free exercise of religion" with respect to education is not to be an empty constitutional right.
>
> Parental choice of public or private education should be available to all. To help alleviate the double financial burden placed upon parents who send their children to religious schools, we appeal for the enactment of tuition tax credits or similar tax relief as a matter of economic justice. The legislation we advocate would enhance values important to our society — educational pluralism, academic freedom, and excellence in all education through freedom of access. Any such legislation should contain an unequivocal prohibition of racial discrimination. The National Association of Evangelicals urges Congress to enact such remedial legislation.

■ NAE COMMISSIONS ☐ Christian Education Commission ☐ Commission on Chaplains
☐ Evangelical Churchmen Commission ☐ Evangelical Social Action Commission ☐ Evangelism and Home Missions Association
☐ Higher Education Commission ☐ Stewardship Commission ☐ Women's Fellowship ■ AFFILIATES
☐ American Association of Evangelical Students ☐ Evangelical Foreign Missions Association
☐ National Religious Broadcasters ■ SUBSIDIARY CORPORATION ☐ World Relief Corporation
■ SERVICE AGENCIES Evangelical Child and Family Agency, Chicago ☐ Evangelical Family Service, Syracuse, NY
☐ Evangelical Purchasing Service ☐ Family Ministries, Cerritos, CA ☐ Universal Travel Service
■ NATIONAL OFFICE 450 E. Gundersen Drive/P.O. Box 28/Wheaton, Illinois 60187 // (312) 665-0500

Three major benefits would flow from the enactment into law of tuition tax credits — freedom of choice, enhancement of educational pluralism, and excellence via competition.

Freedom of Choice. Theoretically parents enjoy freedom of choice now with respect to the education of their children in public or private schools. But that choice can be rendered illusory by economic circumstance. Those who believe public schools are incompatible with their personal convictions must pay twice for education, financing public schools through taxes and private education through tuition.

Educational Pluralism. American public education has become thoroughly secularized. Religious values are ignored; values antithetical to Biblical precepts are taught. Tuition tax credit legislation would reduce the penalty now exacted as the price of educating children in a religious environment.

Excellence Via Competition. Tuition tax credits would help foster a free-market educational system, with parents and children as consumers and teachers and school administrators as producers. Competition would force educational excellence as a matter of survival. The near monopoly of public education today is not conducive to improvement in the quality of education. Diversity is the best guarantee of quality.

Many evangelicals are in anguish because the public education system, with their tax dollars, undermines the Biblical values they teach at home and in the church. We urge favorable consideration of S. 528.

May 12, 1983

The National
Coalition for
Public Education

Chairperson
Mrs. Grace Baisinger
National PTA

1201 16th Street, N.W. / Suite 621 / Washington, D.C. 20036 / Phone: 202-822-7878

TESTIMONY OF THE

NATIONAL COALITION FOR PUBLIC EDUCATION

IN REGARD TO TUITION TAX CREDITS

BEFORE THE

SENATE FINANCE COMMITTEE

U.S. SENATE

APRIL 28, 1983

The National
Coalition for
Public Education

Chairperson
Mrs. Grace Baisinger
National PTA

1201 16th Street, N.W. / Suite 621 / Washington, D.C. 20036 / Phone: 202-822-7878

Mr. Chairman and distinguished members of the Senate Finance Committee. The National Coalition for Public Education appreciates the opportunity to present its views on S.528, a bill which would provide income tax credits to only 10% of the parents who send their children to elementary or secondary non-public schools. The National Coalition for Public Education comprises over 50 civic, civil rights, educational and religious organizations with a combined constituency of over 40 million members unified in their efforts to oppose and defeat all tax credit proposals. The concept of S.528 is no more worthy of congressional approval today than were the other tax credit plans considered by this Committee in the past. In prior detailed testimony, The National Coalition for Public Education contended that tuition tax credits are a not too subtle attempt to weaken the American public school system economically, produce unsound national educational policy, and violate the letter and the spirit of the Constitution of the United States. In a word, tuition tax credits would have the effect of removing support for the public schools and redirecting that support to non-public and church related schools.

In the short time this morning, permit me first of all to reinforce our prior testimony which was presented to this Committee over the past two years. Secondly, I ask you to focus your attention on new developments and several recent studies that corroborate our belief that tuition tax credits would represent a radical shift in current public education policy.

THE ECONOMIC ARGUMENTS

• Tuition Tax Credits Would Be An Economic Disaster

When the National Coalition testified before this Committee on June 4, 1981, the projected federal deficit was in excess of $60 billion. When we next testified on July 16, 1982, the projected deficit was in excess of $100 billion. Today,the projected deficit is in excess of $200 billion and several weeks ago, the Senate Budget Committee heard testimony that predicted another $900 billion in federal deficits through 1988. Since tuition tax credits are a multi-billion tax expenditure, an uncontrollable entitlement program, and an incentive that will reduce the pool of income that a government can draw on for taxes, just what do the sponsors of S.528 propose to recommend to reduce spiraling deficits? Certainly, tuition tax credits would open the door to even greater spending in future years as the private school interests push for larger and larger credits. This is best exemplified by House bill 404 in the Minnesota State Legislature advocated by a number of private school organizations which would increase the Minnesota state tuition deduction by 75% for private elementary and secondary schools. This is but proof that tuition tax credits would be the "foot in the door" for ever larger credit amounts.

S.528 comes at a time when no fewer than 37 states report deficits,revenue shortfalls, spending cuts, and reduced public educational services. In many local school districts, reductions in federal, state and local spending means that school districts are beyond cutting the fiscal "fat" out of budgets: they are down to the marrow. And all of this at a time when the Administration is seeking to reduce the Federal Education budget from $15.2 billion to $13.1 billion. It would require $21 billion in 1984 just to maintain public school programs administered through the Education Department at their 1980 levels.

- Non-Public Schools Already Receive Massive Amounts Of Public Monies

There is an erroneous perception that non-public schools are totally shut off from receiving public tax monies. This is not true. To the extent that non-public schools raise their tuition levels above current levels, tax credits represent an unrestricted revenue source for schools. Non-public schools are presently eligible to receive public money through assorted local,state and federal resources. Many primary forms of public support for non-public schools are already embedded in tax codes and state and federal regulations:

1. At state and local levels, private schools usually are exempt from property taxes on real property and improvements used for school purposes.

2. Non-profit schools pay no income, use or sales tax.

3. Individuals and corporations may deduct voluntary private school contributions from federal income taxes.

4. In many states, students of private schools receive publicly supported services and equipment such as testing, textbooks, handicapped services and transportation. Released time and dual enrollments are also common.

5. Federal funds are also allocated to private schools through numerous programs some of which provide funds directly to schools and others of which flow through states. A large portion of federal funds are restricted in use, such as those provided through Chapter I, which are subject to regulations regarding their use. On the other hand, other funds such as Impact Aid and ECIA are unrestricted in how they can be used. Money from the Department of Education for private schools amounted to approximately $43 per student in the school year 1981-82.

6. Starting in the school year 1982-1983, non-public schools have the opportunity to participate in a new federal program, Chapter II of the Educational Consolidation and Improvement Act (ECIA). ECIA provides $437.5 million for use by state and local districts. Of that amount, public school districts must hand over approximately $48 million based on the present national private school

enrollment. And this will translate into more dollars for private schools. While the data for ECIA is just beginning to come in, we know that Delaware's private schools will get 15% in new money and New Jersey's private schools will get 17% in new federal monies. This trend is being established in other states.

Although very few states or the federal government compile information on a systematic basis related to public expenditures for private schools, the National PTA has been able to collect more specific data from several states indicating the magnitude of federal and state monies going to non-public schools. For instance, during the school year 1981-1982:

- Minnesota spent $53 million for private school services including a state tax deduction for private school students.
- In a special "White Paper" on private school aid, the Ohio State PTA reports that Ohio spends in excess of $50 million on non-public schools;
- The Pennsylvania State PTA reports that more than $60 million goes to private schools in its state;
- New Jersey spent more than $57 million for private school services.

Although statutes and regulations will differ from state to state, the following itemized list compiled by the New York State

PTA provides a breakdown of that state's expenditures for non-public schools during the school year 1981-1982:

STATE AID

1. Transportation	$95,400,000
2. Textbook Aid	$ 8,414,000
3. School Lunch	900,000
4. Handicapped Students	12,405,000
5. Breakfast Program	900,000
6. Mandated Services (i.e. testing, program evaluation, and reporting)	14,274,000
7. Aid to public schools for handicapped students who are enrolled in private schools	27,867,000

Total state aid spent on private schools in New York totaled over $160,160,000 last year. Other auxilliary services from other states for private schools may include: subsidies for private school teachers of secular subjects, tax deductions, diagnostic health services and building maintenance and repair. The critical policy questions are: how many more programs for private schools will the states and federal government add, how much will they cost, are they constitutional, and how much more money will they take from the support of public schools?

PUBLIC POLICY ARGUMENTS

In a 1982 report conducted for the National Coalition for Public Education by the Council of the Great City Schools and the American Association of School Administrators[1], it was concluded that in the 65 urban school districts studied, with tuition tax credits the federal government will be spending on an average of three times more for the instruction of private school children than it will for public school children. There are some urban school districts such as Topeka, Kansas; Lincoln, Nebraska; and Allentown, Pennsylvania, where non-public schools would receive more than three times the amount of federal funds. Although this report was based on the original Reagan bill, S.2673, the trend is clear. While the federal government is reducing money for public education, it will be increasing at a disproportionate rate the monies provided for non-public schools. Spending by the federal government to subsidize the teaching of public school children will fall from $207 per child in 1980-1981 to $105 per child (based on Administration projection) in 1984-1985, a 50% decrease; but with tax credits, will increase from $43 per child to $329 per child for private school children over the same period, a rise of 565%. This has severe federal education policy implications. First, there would be a major shift away from the high-cost, more difficult to educate and needy students to those in better circumstances in the urban areas. Secondly, the report suggests a trend that tuition tax credits (even at the $300 maximum level) will eventually equalize support for public and private schools which represents a major policy shift by itself. Thirdly, for urban districts, this report presents conclusive evidence that even at the S.528 credit levels, private schools will be receiving more federal support on a per pupil basis than will public schools.

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[1] "The Effect of Tuition Tax Credits On Urban Schools." A Joint Report by the Council of the Great City Schools and the American Association of School Administrators, August, 1982

In another study by the Education Commission of the States[2] released in October of 1982, it was concluded that under the original Reagan tuition tax credit proposal, "in some states, there would be a significant flow of tuition tax credits, resulting in an average tax credit that would exceed the per pupil amount of federal aid currently flowing to the state. In addition, if the revenue loss due to tax credits were made up by reducing federal aid to public schools, the average value of the credit would equal or exceed the average value of federal aid to public school pupils in almost every state."

For instance, with a $500 maximum credit, the ECS study concludes that in 18 states the average value of this tax credit would be less than the average amount of per pupil federal support. In 12 states, the average tax credit would be between

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[2] "Tuition Tax Credits: Their Impact on the States," Education Commission of the States, October, 1982

100 and 125 per cent of the average per pupil level of federal support. In 9 states. tax credits would, on average, be between 125 and 150 per cent of the amount of per pupil federal aid. In 11 states, the average tax credit would exceed 150 per cent of the average federal aid currently available to each pupil in public schools. Although no data on the lower credit amounts of S.528 is available, the proportional distribution of the credits would be only reduced slightly. Over half of all the credits, 53 percent, would flow to eight states (California, Florida, Illinois, Michigan, New Jersey, New York, Ohio and Pennsylvania). These eight states currently receive 37 per cent of federal education support. We do not wish to argue that if tax credits were simply cheaper that equity would appear. We do wish to argue that the growing body of evidence suggests that tuition tax credits is an avenue for creating inequities:

- Between public and private schools
- Between the rich and the poor
- Between states in our country
- Among regions of our country

This pattern of decreased public educational funding has no place in the United States where equity has been a major national priority. At risk is nothing more than a new system of financing education that would provide direct general assistance to private schools. This would be in addition to the massive monies private schools already receive through the various other public sources.

CONSTITUTIONAL ARGUMENTS

- Tax credits violate the Constitutional principles of separation of church and state because religious schools would be recipients of federal aid.
- Since religious schools or parishes would be beneficiaries of tax credits, federal monies would tend to advance and foster religion at public expense.
- In order to assure tuition tax credits are used for a non-sectarian purpose, and do not advance or inhibit religion, public surveillance and monitoring on schools grounds would be necessary thereby leading to excessive entanglements.

It is our judgment that under well-established Supreme Court precedent, S.528 would be a law respecting an establishment of religion and would therefore violate the First Amendment.

S.528 proposes a special tax benefit for parents who send their children to private sectarian schools. We believe the First Amendment was designed to prohibit the government from aiding and advancing religion in this way. Just as the government may not prohibit the free exercise of religion including sending children to private religious schools, (Pierce v. Society of the Sisters, 268 U.S. 510 (1925), it also may not advance any particular religion or religion in general. School District of Abington Township v. Schempp, 374 U.S. 203 (1963). The government must remain neutral on the issue of religion. Because over 85 % of private elementary and secondary schools in this country are religiously affiliated S.528 would have the direct effect of advancing religion. It therefore cannot be squared with the principle of neutrality toward religion embodied in the Establishment Clause of the First Amendment.

The Supreme Court has agreed with this view of tax benefits for private religiously affiliated schools. The principle authority in this area is Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 657 (1973). In that case the Supreme Court invalidated New York state's tuition tax credit as a violation of the Establishment Clause of the First Amendment. The Court reached this result by applying a three-prong test for determining an establishment of religion: to survive constitutional attack, the statute in question first must reflect a clearly secular purpose; second, must have a primary effect that neither advances nor inhibits religion; and, third, must avoid excessive entanglement with religion. Lemon v. Kurtzman, 403 U.S. 602 (1971 .

We believe the case law in this area to be fundamentally sound.It is rooted in the history of this nation which was formed in part to escape from the tyranny of government--advanced religion. The separation of church and state is a cornerstone of our constitutional democracy. We urge Congress to honor this constitutional principle and reject the special tax benefits for private religious schools which would be enacted by S.528. Thank you for this opportunity to present our views.

The National
Coalition for
Public Education

Chairperson
Mrs. Grace Baisinger
National PTA

1201 16th Street, N.W. / Suite 621 / Washington, D.C. 20036 / Phone: 202-822-7878

TUITION TAX CREDITS
FACT SHEET

The National Coalition for Public Education (more than 50 affiliated organizations with more than 40,000,000 combined members) strongly opposes tuition tax credits. The Coalition members believe tuition tax credits would be bad educational and economic policy and would violate both the letter and the spirit of the Constituion of the United States.

Tuition tax credits are designed to remove support for the public schools—which serve nearly 90% of all U.S. students—and to redirect that support to the non-public (church-connected and private) schools.

- The Reagan Administration proposed Fiscal 1984 budget calls for a tuition tax credits program that would cost upwards of $2.5 billion over the first three years and costs would escalate yearly thereafter. At the same time the Administration is seeking a corresponding REDUCTION of $2 billion for FY 1984 alone in support for existing education programs.

- Non-public schools already receive significant federal and state aid for services they may provide—for example, education programs for the disadvantaged and funds for textbooks and transportation.

Tuition tax credits would discriminate against the majority of Americans, especially the less affluent and poor.

- The Reagan Administration opposes including a REFUNDABILITY provision in tuition tax credits proposals. Without such a provision, the full tax credits would be available ONLY to those whose taxes-due exceed the amount of the proposal tax credit. Others would be ineligible.

- Lack of refundability would disproportionately discriminate against minorities—according to the 1980 United States Census, 37% of Hispanic and 46% of Black families with school age children earn $10,000 or less annually and would, therefore, be automatically denied the proposed tuition tax credits even at the proposed figure of $300 per credit.

- The vast majority of non-public schools that are NOT church-connected charge so much for tuition that the overwhelming majority of Americans could not afford to pay the full tuition over and above the amount of the tax credit.

- Nearly 90% of all American students attend public schools. The proposed tuition tax credits would be of no benefit whatever to the vast majority of Americans including those with children in the public schools, those without children of school age and those who have no children.

- Average income of families of all non-public school students is 37% higher than the average income of families of public school students—the proposed tuition tax credits program is an attempt to benefit a small minority of Americans who are significantly more affluent than the majority.

The proposed tuition tax credits could result in sending public funds to support schools that discriminate on the basis of race, religion, national origin, sex, handicap, or hiring practices.

- The tuition tax credits proposals contain no provisions whatever to prevent or oppose any type of discrimination other than racial discrimination.

- Provisions against schools which discriminate racially are narrowly defined and would NOT constitute an effective deterrent to racial discrimination.

- Tuition tax credits rely only on voluntary statements by non-public schools that they do not discriminate on the basis of race; verification procedures would only take place if individual complaints of racial discrimination were received.

Tuition tax credits are designed to channel public funds in large amounts to churches and to religious groups in violation of both the letter and the spirit of the Constitution of the United States.

- 88.8% of all private school students in the United States attend religiously affiliated schools.

- The United States Supreme Court has established a three-pronged test by which to measure the constitutionality of any statute—the statute must (1) have a secular purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) not lead to excessive entanglement of church and state.—Lemon v. Kurtzman, 1971. The Supreme Court has declared that tuition tax credits clearly violate this test because they send federal money to both churches and religious groups and organizations for their use in providing education in their religious schools (Committee for Public Education and Religious Liberty v. Nyquist, 1973).

Tuition tax credits would not meet the needs of handicapped, disadvantaged and vocational education students.

- Only about 2.7% of all religious schools provide programs for the handicapped.

- Only 3.0% of all non-public schools provide vocational education programs.

- Less than 5.0% of all non-public schools provide any services at all to economically disadvantaged students.

Tuition tax credits would be economically disasterous for America.

- In view of soaring budget deficits, tuition tax credits would be multi-billion dollar budget busters.

- Because there could be no limit to the number of people who might theoretically choose to take advantage of them, the proposed tuition tax credits would be potentially uncontrollably inflationary federal programs.

- The availability of public money and increased enrollments would lead inevitably to increased tuition charges and increased tax credits.

Tuition tax credits represent a false concept of why public schools exist.

- Universal, tuition-free, public education provides the basis for a strong and free America.

- The vast majority of taxpayers would be asked to financially support a minority who choose NOT to take advantage of an available public service.

- There are approximately 40,949,100 public school students in America compared to just about 5,028,865 private school students—89.1% of all students seek their education through the public schools.

- Citizens who choose to employ private security guards instead of relying on the public police forces, to use private as opposed to public transportation, or to build private pools in their back yards, do NOT receive federal tax credits or other payments to support their private choice in these matters. Citizens who may oppose some aspect of our national policy, such as construction of atomic weapons or engaging in a military conflict, are not allowed to take back the portion of their taxes that go to support such matters of national policy. Nor should such payments as tax credits be made to those who do not want to make use of the public schools.

* * * *

There are even more facts and arguments in support of the strong case AGAINST the proposed tuition tax credits. Here are a few of them:

- Tax credits undermine America's traditional system of universal public education.

- Private schools can refuse to offer services that public schools must provide and can be more selective with regard to whom they admit.

- Studies comparing college prep students show little if any difference betwen public and private school students.

- Tax credits would induce an educational caste system by drawing children from middle- and high-income families into private schools and leaving difficult and more expensive-to-educate children behind.

- Tax credits would further erode public school support by working to decrease public school attendance, causing a decrease in state support under state funding procedures.

- Tax credits will increase paperwork and red tape by imposing increased recordkeeping on the schools and the federal government to monitor and audit tax credits.

- Tuition tax credits would disproportionately distribute tax funds because:

  –private school enrollment remains highest in the Northeastern and Northcentral states and lowest in the South and West, and

  –private school enrollment is highest among northern, white, wealthy families. Further,

  –students in the South and West pay more to attend private schools than do their counterparts in the Northcentral and Northeastern regions.

- In urban school districts, non-public school students would receive up to 5 times as much federal support as would public school students.

- Parents of public school students would in effect pay taxes twice; once for public schools and a second time through the tax credits provided for parents of non-public school students.

- Tuition tax credits are a "reverse Robin Hood" approach, taking from the poor and giving to the rich.

- Enactment of tuition tax credits would create per-pupil allocations for non-public school students of at least four times the amount of federal aid for each student in public schools.

- Tuition tax credits would make churches dangerously dependent on the federal government for significant amounts of funding.

- Tuition tax credits, once enacted, would lead to endless pressure on the Congress to increase the amount of the credits and the percentage of tuitions that would be reimbursed until non-public schools received the same amounts of public funding as the public schools do.

- Tuition tax credits would dilute public control over public spending. Public schools are governed by boards responsive to local voters. Local voters have no control whatever over how money is spent by private and church schools.

- Non-public schools, by accepting the federal funds, would wind up accepting federal controls of their now-independent programs.

- Taxpayers would eventually lose any possible benefit of tax credits because nothing in the legislation would prevent non-public schools from increasing tuitions to absorb all the amount of the credit, leaving parents exactly where they were before.

Place
Stamp
Here

The National
Coalition for
Public Education
1201 Sixteenth St., N.W.
Suite 619
Washington, DC 20036

The following is a partial list of Coalition members

AMERICAN ALLIANCE FOR HEALTH, PHYSICAL EDUCATION, RECREATION & DANCE (AAHPERD)
AMERICAN ASSOCIATION OF CLASSIFIED SCHOOL EMPLOYEES (AACSE)
AMERICAN ASSOCIATION OF COLLEGES FOR TEACHERS EDUCATION (AACTE)
AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS (AASA)
AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES (AASCU)
AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW)
AMERICAN CIVIL LIBERTIES UNION (ACLU)
AMERICANS FOR DEMOCRATIC ACTION (ADA)
AMERICAN ETHICAL UNION (AEU)
AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS/PUBLIC EMPLOYEES (AFL-CIO)
AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES (AFSCME)
AMERICAN FEDERATION OF TEACHERS (AFT)
AMERICAN HUMANIST ASSOCIATION (AHA)
THE AMERICAN JEWISH COMMITTEE (The AJC)
AMERICAN JEWISH CONGRESS (AJC)
A. PHILIP RANDOLPH (APR)
AMERICANS UNITED FOR THE SEPARATION OF CHURCH AND STATE (AUSCS)
AMERICAN VOCATIONAL ASSOCIATION (AVA)
BAPTIST JOINT COMMITTEE FOR PUBLIC AFFAIRS (BJCPA)
BOARD OF CHURCH & SOCIETY/UNITED METHODIST CHURCH (UMC)
CHILDREN'S DEFENSE FUND (CDF)
COUNCIL FOR EDUCATIONAL DEVELOPMENT AND RESEARCH (CEDAR)
COUNCIL OF CHIEF STATE SCHOOL OFFICERS (CCSSO)
COUNCIL OF GREAT CITY SCHOOLS (CGCS)
LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT (LCLAA)
LEAGUE OF WOMEN VOTERS OF THE UNITED STATES (LWV/US)
MEXICAN AMERICAN LEGAL DEFENSE EDUCATIONAL FUND (MALDEF)
NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS (NAESP)
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP)
NATIONAL ASSOCIATION OF ADMINISTRATORS FOR STATE & FEDERAL EDUCATION PROGRAMS (NAASFEP)
NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS (NASP)
NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION (NASBE)
NATIONAL BLACK CHILD DEVELOPMENT INSTITUTE, INC. (NBCDI)
NATIONAL COMMITTEE FOR CITIZENS IN EDUCATION (NCCE)
NATIONAL CONGRESS OF PARENTS AND TEACHERS (National PTA)
NATIONAL COUNCIL OF JEWISH WOMEN (NCJW)
NATIONAL COUNCIL OF SENIOR CITIZENS (NCSC)
NATIONAL EDUCATION ASSOCIATION (NEA)
NATIONAL PUBLIC EDUCATION AND RELIGIOUS LIBERTY (National Pearl)
NATIONAL SCHOOL BOARDS ASSOCIATION (NSBA)
NATIONAL SCHOOL PUBLIC RELATIONS ASSOCIATION (NSPRA)
NATIONAL SCHOOL VOLUNTEER PROGRAM (NSVP)
NATIONAL URBAN LEAGUE (NUL)
NEW YORK CITY BOARD OF EDUCATION (NYC Bd. of Ed.)
PEOPLE FOR THE AMERICAN WAY (PAW)
STUDENT NEA (SNEA)
UNION OF AMERICAN HEBREW CONGREGATION (UAHC)
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
UNITED STATES STUDENT ASSOCIATION (USSA)
UNITED UNIVERSALIST ASSOCIATION (UUA)
VOICE OF REASON (VOR)

SUBMITTED BY

THE NATIONAL CONGRESS OF PARENTS AND TEACHERS
(The National PTA)

Mr. Chairman and members of the Committee:

The National PTA, the nation's largest parent and child advocate organization appreciates the opportunity to testify in total opposition to S.528 and all other tuition tax credit schemes that provide public assistance to private schools. Although the National PTA has opposed tuition tax credits since 1978, opposition to tuition tax credits was overwhelmingly reaffirmed in 1982 by over 1200 PTA leaders from across the country at the National PTA convention. At that time, the convention delegates directed the National PTA Board to oppose tuition tax credits. The National PTA board in turn established defeat of tuition tax credits as one of its major legislative priorities. Convention action was based on a two pronged National PTA position: support of public education and assurance that federal funds for education will be appropriated only for public schools that are publicly controlled and tax supported.

The public schools are accountable to the public for their educational policies and their fiscal policies. They are governed by schools boards, either elected by the people or appointed by elected officials. Anyone can serve on a local school board, including parents of children in non-public schools. The private and parochial schools, on the other hand, are not accountable to the public. We do not elect their trustees. They do not hold open public meetings to set their policies. We cannot vote on their school budget. The public is not represented. Forcing taxpayers to support them is taxation without representation.

We believe that America must have high quality tuition free public schools which allow all children to reach their full potential. Adopting tuition tax credits would be educational policy making at its worst, and would threaten the very foundations upon which public education has been built: equal educational opportunity; equal access to a public education; and a universal, tuition free education for all children. Tuition tax credits would be anathema to these principles.

The National PTA maintains that tuition tax credits are budget busting, unfair, and unconstitutional.

TUITION TAX CREDITS WOULD BE BUDGET BUSTING

- The Reagan Administration proposed tuition tax credit plan is estimated to cost in excess of $2.5 billion at a time when all segments of our society are undergoing austerity measures due largely to federal program cuts.
- Tuition tax credits are an entitlement program and an uncontrollable cost. The cost of a tuition tax credit can only be estimated since it is based on such variables as the number of parents who would qualify for

the credit, the amount of tuition paid, and the number of parents who actually claim the credit. The more students who shift from public to private schools, the higher the cost of tuition tax credits. At a time when we must bring the budget under control, tuition tax credits are uncontrollable.

- The basic tax credit program would invite endless escalation as private schools would demand larger credits. For example, private school groups in Minnesota are lobbying for a 100% increase in that state's tuition tax deduction plan. Non-public schools already get over $14 million dollars under the present plan, and the same pressure to increase credits would exist at the federal level.

TUITION TAX CREDITS ARE UNFAIR AND INEQUITABLE

- Currently, students in K-12 non-public schools comprise 11% of the school population. Only these parents would qualify for a tuition tax credit.
- Since the Reagan Administration plan does not provide a provision for refundability, only families who pay enough taxes to claim a credit would benefit and most of the money would go to families in higher income brackets. The really needy families who earn less than $15,000 a year and constitute only 3% of the children in private schools would receive little help from tax credits because they have little or no tax liability.

- The majority of non-public school students are located in 9 states. These 9 states would receive a disproportionate share of tuition tax credit money paid for by the rest of the nation.
- Tuition tax credits give private schools an unfair advantage over public schools, since private schools can refuse to offer services that public schools must provide and because private schools can be selective with regard to whom they admit.
- Tuition tax credits would not fairly meet the needs of handicapped, disadvantaged, and vocational education students.
    - Only about 2.7% of all religious schools provide programs for the handicapped;
    - Only 3.0% of all non-public schools provide vocational education programs;
    - Less than 5.0% of all non-public schools provide any services at all to economically disadvantaged students.
- Parents of children in private schools already get an average of at least $60 in federal support per pupil. With tuition tax credits, private school children would receive at least $360 in several years.
- In a report released by the National Coalition for Public Education and conducted by the Council of Great City Schools and the American Association of School Administrators, it was found that among 65 urban school districts surveyed, Reagan Administration policies would reduce public aid to public schools on average from $206 per student in 1980-81 school year to $105 per school year

in 1984-85--a drop of 49%...while public federal aid to private schools through tuition tax credits would be increased by over 500%.

- Many non-public schools already receive large amounts of money from federal and state resources. For example, during the 1981-82 school year:
  - Minnesota spent $53 million for private school services in addition to a state tax deduction for private school tuition;
  - Ohio spent in excess of $50 million for private schools;
  - Pennsylvania allocated more than $60 million to non-public schools;
  - New York provided over $200 million to non-public schools;
  - New Jersey spent more than $57 million for private school services.

TUITION TAX CREDITS WOULD BE UNCONSTITUTIONAL

- Tax credits are designed to direct federal money to non-public schools, including those run by religious establishments, thereby being used to advance and foster religious teachings at public expense.
- 84% of all private school students in the United States attend schools with a religious affiliation.
- The United States has established a three pronged test by which to measure the constitutionality of any statute--the statute must have (1) a secular purpose; (2) a primary effect that neither advances nor inhibits religion; and (3) not lead to excessive entanglement of church and state.

- Lemon vs. Kurtzman, 1971 is the court case that established the three pronged test above. Tuition tax credits violate this test. Tuition tax credits are designed to send federal money to both churches and religious groups and organizations for their own use in providing education in their religious schools.

Mr. Chairman, the National PTA contends that the principle of tuition tax credits does a great disservice to public education, has little to do with educational quality, subsidizes the choice of more affulent tax-payers able to afford private schools, and diverts the most important duty of government which is to provide public education. The demand that a small minority be financially rewarded for not using free, public education, in addition to receiving exemptions from prevailing educational and social policy has no legitimate place in public thinking. The National PTA urges this committee to oppose tuition tax credits.

Mary M. Patnaude

for

New Jersey Right to

Educational Choice Committee

Summary

Government guarantees all parents the right to choose the kind of education they want for their children.

The present method of funding education makes it impossible for many parents to exercise their rights.

Non-public school parents are in the mainstream of American Society.

The education of all children is in the best interests of our country.

Non-public school parents deserve a vote by Congress on the issue of Tuition Tax Credits.

There is little to say that has not already been said regarding the issue of tuition tax credits for families of non-public school students. This is the third time in two years that this Committee has held hearings on tax credit legislation. The constitutional experts, the bureaucrats, the representatives of the public school teachers unions have all testified eloquently. But not many non-public school parents have come to testify. They can't leave their homes and their jobs, they can't afford the expenses involved in getting here and many of them have little faith in their ability to effect a change that is opposed by so many powerful and wealthy interest groups.

I have asked to testify in favor of tuition tax credit legislation for The New Jersey Right To Educational Choice Committee. This is a grassroots organization of parents and others who support non-public education and who believe that the present method of funding education in our country discriminates against parents who choose or would like to choose non-public education for their children. The work of the organization is done by volunteers. There is no paid staff.

To begin, I urge you to amend this bill, as you have amended previous tax credit bills, to add refundability for those families who do not owe income tax because their incomes are too low. To fail to add this amendment would be to ignore the rights and needs of those parents in our society who suffer most and sacrifice most when they choose non-public education for their children.

I also want to take this opportunity to react to some of the arguments used by those who oppose tuition tax credit legislation. Some of these arguments have been used for so long that they are accepted without question, even by those who eventually will vote on the issue.

1. The non-public schools do not educate the poor or the minorities.

   This argument is usually given by groups and individuals who militantly oppose any change in the method of funding education that would allow poor parents to choose non-public education for their children. The non-public schools have always educated the children of the poor and continue to do so in spite of the difficulties involved because of government funding policies. Many minority and other poor parents make tremendous sacrifices to educate their children in non-public schools. In New Jersey we have a Catholic school population of over 185,000 students. Minority students comprise approximately 20% of this enrollment.

   It should be noted that some of the groups who use this argument regarding the unavailability of non-public education to the poor have gone to court to attempt to take remedial and other tax supported programs away from low-income children in non-public schools.

2. Government should be neutral toward religion. Therefore, no tax money should be spent for the education of students in religiously affiliated schools.

   What a strange concept of neutrality. Government mandates the education of all of our young people as being in the best interests of our society. It guarantees parents the right to choose the kind of education they want for their children. It collects taxes from all taxpayers to pay for this universal education because it ultimately benefits all of society. Then, it denies a fair share of this education tax money to parents who choose religiously affiliated non-public schools because it must be "neutral" toward religion. This forces those parents who want their children educated in religious schools to pay twice, for public schools through their taxes and for their children's non-public education by paying tuition. The most incredible part of this whole "neutrality" discussion is that so many Americans have accepted the present situation as "neutral" for so long a time.

3. Passage of tuition tax credit legislation will destroy the public schools.

This argument is very often used by leaders in the public school community. What is really being said here? Does it mean that if parents were given a real choice in the education of their children, free from the financial penalties now involved in such a choice, that they would leave the public schools in such great numbers that the system would be destroyed? And what is the remedy that is implied? Is it to force those parents who can't afford a choice, to keep their children in public schools whether or not they believe that their children are receiving an adequate education there? Is it to insist that government base its educational policies not on the needs and choices of individual citizens but on the protection of a system of education that would be rejected in an open marketplace?

4. During these difficult economic times, these people (non-public school parents) want taxpayers to help pay for the education of their children.

This argument implies that those citizens who use non-public schools are not part of the mainstream of American society. This, of course, is not true. Non-public school parents are just like others in our society. Inflation hurts them. They lose their jobs when plants close down. They tighten their belts when their incomes are cut. And they pay any additional taxes levied at the state and local levels to make up for cutbacks in federal programs. They are not insulated or isolated from hard times. They are more vulnerable than most, because they pay twice to educate their children. Often the poorest of them cannot continue to send their children to the schools they prefer and must remove them. Interestingly enough, when this happens government at all levels finds the money to educate their children in public schools.

5. We should wait to see what the Supreme Court says about current cases on the issue.

It seems that there are always reasons to wait a little longer. If Congress believes that the present system of funding education is flawed, then it should act to correct the flaw. If other minorities had accepted constant delay and inaction because of previous or possible Court rulings, black Americans would still be considered non-persons and women would still be considered chattel.

6. The best thing that government can do for non-public schools is to leave them alone.

The non-public school community should have no problem with this sentiment if there were agreement on the definition of "leaving them alone". Early in our history, England "left us alone" and imposed taxation with representation. Americans wouldn't buy it. If government's present policies of funding education which penalize non-public school parents by forcing them to pay twice is defined as "leaving them alone", many Americans don't buy that either.

It is time for Congress to consider government's present policies regarding the funding of education. If it believes that these policies are just, that they give parents the greatest possible opportunity to exercise their freedom, to have their values reinforced, to follow their religious beliefs, then it should vote down any change. If, on the other hand, Congress believes that it can do anything to broaden parents' freedom, to protect their rights and to afford them all possible options in the education of their children, it should vote for legislation which would accomplish these goals. This Committee has heard the arguments on this issue many times. It does not seem unreasonable for those who use non-public schools to expect these hearings to result in a vote in the Senate rather than in more and still more hearings. We are beginning to believe that the years of delay represent nothing less than support of the status quo. We are losing faith in the system. We believe that we deserve at the very least a "yes" or "no" vote by our representatives.

I urge you to amend the bill to include refundability, to vote it out of committee, and to push for a vote by the whole Senate. Such action is long overdue.

Testimony of
NEW YORK STATE SCHOOL BOARDS ASSOCIATION

by

Stanley L. Raub

Executive Director, NYSSBA

The New York State School Boards Association welcomes this opportunity to present testimony before this Committee on the Tuition Tax Credits issue.

We continue to oppose strenuously the enactment of tuition tax credits for parents of nonpublic elementary and secondary schools. S-528 and HR-1730, the Reagan Administration tuition tax credits bill, is a considerably amended bill from the 1981 measure, S-550, which was supported by Senators Moynihan and D'Amato of New York.

Extensive language in the bill would deny tuition tax credits for amounts paid to schools that engage in racial discrimination. Indeed, the bill dwells at great length and in great detail on procedures for assuring that tuition tax credit funds do not go to schools professing racial discrimination. "Racial" is emphasized to such a degree that one soon begins to wonder just why that is so. Then you realize: No other form of discrimination practiced by nonpublic schools is even touched upon under this legislation. Nonpublic schools could take federal tax monies in the form of tuition tax credits and continue to discriminate as they please, except for race.

Thus, the bill would promote the establishment of an educational caste system. Pupils that private schools cannot handle by reason of handicap or because they are "difficult" would be sent to public schools. The bill would further promote the success of private schools through exclusivity, while rendering public schools a "dumping ground" for "unacceptable", or less academically inclined students.

In a further attempt to assure that nonpublic schools get the benefit of additional federal dollars without being required to meet the standards that public schools must meet, the bill contains Section 5 which says that tax credits are not federal financial assistance. That section reads as follows:

"Tax credits claimed under Section 44H of the Internal Revenue Code of 1954 shall not constitute federal financial assistance to educational institutions or to the recipients of such credits."

In this way, S-528 protects nonpublic schools from a number of other antidiscrimination requirements in federal law that apply to recipients of federal aid. School districts that discriminate by reason of creed, nationality, age, sex, or handicap, all are under threat of losing their federal financial assistance. Obviously, for nonpublic schools, if tuition tax credits are not federal aid, the nondiscrimination requirements do not apply.

S-528 and HR-1730 would not provide equity, but rather a special advantage in the distribution of federal aid. This bill provides added protection for the practices of discrimination by income, by handicap, and by ability. It continues assurance that admissions may be restricted in whatever manner one wishes and still permits the receipt of public monies.

With the passage of the Education Consolidation and Improvement Act of 1981, nonpublic schools were guaranteed equity with the public schools in the distribution of federal aid monies. The increased aid to nonpublic schools under Chapter II of that act was obtained at the expense of the public school districts, with the total of Chapter II monies available greatly reduced from previous years.

This tuition tax credit legislation adds tax credit monies atop the federal assistance already being received by the nonpublic schools in Chapter II, in Chapter I (the old Title I) and for school lunch and breakfasts. Thus a public policy of favoring nonpublic education over public education would be adopted. The promotion of privilege would be the new national image of education.

The New York State School Boards Association strongly urges the members of this committee to oppose the enactment of tuition tax credits or direct tuition assistance for parents of nonpublic elementary and secondary school pupils. The federal tax revenue that would be lost by granting tuition tax credits would be better applied to help reach long-promised levels of federal aid for education of the handicapped.

STATEMENT TO: SENATE FINANCE COMMITTEE

SUBJECT: S.528, TUITION TAX CREDITS

BY: THE UNITARIAN UNIVERSALIST ASSOCIATION OF CHURCHES OF NORTH
AMERICA (UUA)
THE AMERICA HUMANIST ASSOCIATION (AHA)
THE COUNCIL FOR DEMOCRATIC AND SECULAR HUMANISM (CODESH)
THE VOICE OF REASON (VOR)

PRESENTED BY: EDD DOERR, EXECUTIVE DIRECTOR, THE VOICE OF REASON,
P.O. BOX 6656, SILVER SPRING, MD 20906 (598-2447)

APRIL 28, 1983

Mr. Chairman and Members of the Committee:

The Unitarian Universalist Association of Churches of North America (UUA), the American Humanist Association (AHA), the Council for Democratic and Secular Humanism (CODESH), and the Voice of Reason (VOR) would like to record their strong objections to S.528, the so-called Educational Opportunity and Equity Act of 1983, which would provide massive federal aid to parochial and private schools by means of tuition tax credits.

The UUA, with 175,000 members, is composed of over 1,000 congregations in the U.S. Unitarian Universalism has a long history in our country, going back to the time of the American Revolution. Indeed, the church of the Pilgrims in Plymouth, Massachusetts, formed in England before their departure in the Mayflower, is a Unitarian church. The UUA has long supported the constitutional principle of separation of church and state as well as the policy of confining tax support to publicly controlled public schools. At its annual General Assembly in June 1982 the more than 2,000 delegates voted almost unanimously for a resolution reaffirming support for church-state separation and specifically opposing tuition tax credits. Prior to the General Assembly, that resolution was voted the highest priority in the democratic process known as the parish poll.

The AHA and the CODESH are smaller associations of religious liberals who also strongly support church-state separation and public education. VOR is an interfaith organization dedicated to defending religious freedom and church-state separation.

The four organizations joining in this statement believe that S.528 is seriously objectionable for at least the following reasons:

1. It is clearly unconstitutional. In the Nyquist ruling in 1973 (413 U.S. 756) the Supreme Court carefully examined the plan and found it to violate the establishment clause of the

First Amendment. Supporters of the bill argue that its effect would be to aid students and not schools, but the Nyquist Court examined and rejected this argument, saying that "the money involved represents a charge made upon the state for the purpose of religious education." Library of Congress and Justice Department constitutional experts have stated that the plan is unconstitutional.

2. By using public funds to aid private schools which are integral parts of the religious missions of the sponsoring churches, S.528 would violate every citizen's right not to be taxed for the support of religion. S.528 would also violate the neutrality toward religion demanded of government by the First Amendment.

3. Although the sponsors of S.528 claim otherwise, the bill would favor the more affluent over the less affluent. According to the most recent figures from the Census Bureau, nonpublic school parents' incomes average 37% higher than those of public school parents -- $22,600 for nonpublic, $16,500 for public. Phasing out tuition tax credits for families with incomes over $40,000 is but an almost meaningless gesture toward equity. Further, S.528 would be of no use to families too poor to pay the unreimbursed part of the parochial or private school tuition. Then, too, S.528 would, when the full $300 credit is in place, put at least twice as many federal dollars per pupil into nonpublic as presently goes to public schools, and all the while this administration is trying to further slash federal aid to public education. Finally, S.528 would in no way prevent private schools it aids from raising tuition to take maximum advantage of the new money available. S.528 does not guarantee that any aid will actually stay with the parents it is ostensibly aimed at.

4. S.528 would subsidize the various forms of discrimination common in nonpublic education. While the bill attempts to put some restrictions on racial discrimination, these cannot overcome the racially discriminatory effects of the other forms of selectivity found in nonpublic schools. At present, nonpublic schools are only 7.5% black in enrollment, while public schools are over 16% black. Nonpublic schools tend toward religious homogeneity because of the doctrines they inculcate (How many Christian students attend Jewish schools, and vice versa? How many religious mainstream students attend fundamentalist schools?). By charging tuition (only a small part of which would be reimbursed by S.528) they tend to exclude the poor. Using entrance exams, failing generally to provide for handicapped children, and aiming chiefly at recruiting college bound children excludes many more. Even in faculty hiring, religious and ideological criteria are often used to discriminate in employment. Thus, S.528 would use public funds to partially support private schools which practice forms of discrimination not allowed in public schools. Further, S.528 would not guarantee a single child a place in a parochial or private school. Public schools must accept all children.

5. Tuition tax credit aid will create political divisions along religious lines. Proposals for such aid have already caused such divisions, as congressional hearings on the subject in recent years have shown. The Supreme Court has noted that preventing such division was one of the purposes of the First Amendment.

6. Tuition tax credits, by diverting public funds to nonpublic schools while public school budgets are under severe and worsening strains, can only damage our democratic public schools. As the report of the National Commission on Excellence in Education has shown, our public schools, which serve 90% of our children, need additional funds if they are to upgrade curriculum, expand the school day and year, attract enough top-notch teachers, and adequately compensate teachers.

7. S.528 would weaken public control over public spending. Our public schools are run by elected boards of local citizens, parents, and taxpayers. S.528 would provide tax support for schools over which taxpayers would have no meaningful control. As in 1776, taxation without representation is tyranny.

8. S.528 would cost the federal treasury nearly twice what the administration has estimated. With five million students eligible for benefits under the bill, a $100 credit would cost about a half billion dollars annually, while a $300 credit would cost about $1.5 billion annually.

9. If by some miracle S.528 were to be upheld by the courts, there would be endless pressure on Congress to increase the amount and percentage of tuition reimbursed until nonpublic schools achieve parity of public support with public schools, as the experience of Britain, the Netherlands and other countries has shown. Resistance by Congress to such increases would lead to large scale sectarian intrusions into the election process, as happened in several states in the 1960s and 1970s.

10. Tuition tax credits would make churches which operate parochial schools dangerously dependent upon government. And acceptance of tax credit aid could and should lead eventually to unwanted public controls. Why shouldn't the public regulate what it pays for, and why shouldn't tax aided private schools have to play by the same rules as public schools.

11. Finally, nearly every indicator of public opinion shows strong public opposition to tuition tax credits and all other forms of tax aid for nonpublic schools. Since 1967 voters in New York, Massachusetts, Maryland (twice), Michigan (twice), Nebraska, Missouri, Idaho, California, Oregon, Washington State, and Alaska have soundly defeated every proposal, grand or petty, to provide state aid to nonpublic schools. In the only referendum directly on tuition tax credits, in the District of Columbia in 1981, voters crushed the plan beneath an 89% to 11% landslide.

Just as significant are the polls taken by members of Congress in their districts. The following table summarizes all of the polls on tuition tax credits which have come to our attention:

Representative	Against	For
M. Holt (R-MD)	54.7%	41.5%
N. Steers (R-MD)	64	30
B. Frenzel (R-MN)	74.4	25.6
R. Regula (R-OH)	58	42
J. Pritchard (R-WA)	66.3	33.7
R. McClory (R-IL)	56	44
P. Williams (D-MT)	60	40
P. Sharp (D-IN)	71	29
B. Rosenthal (D-NY)	56	44
D. McCurdy (D-OK)	71	29
A. Beilenson (D-CA)	63	35
S. McKinney (R-CT)	46	53
P. Roberts (D-KA)	65	35
J. Hammerschmidt (R-AR)	60	40

In conclusion, we believe that a bill so clearly unconstitutional, so clearly inimical to the public interest and social harmony, and so strongly opposed by Americans throughout the country, should not be allowed out of committee. Congress instead should be working to strengthen our beleaguered public schools.

○